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Land Policy and Regulatory Frameworks

A Structured Knowledge base

Enemark, Stig

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RESPONSIBLE LAND ADMINISTRATION TEACHING ESSENTIALS

MODULE 6

**LAND POLICY
AND REGULATORY FRAMEWORKS**

A STRUCTURED KNOWLEDGE BASE

Author: Stig Enemark

Beta – May 2019

About this module

This Module, on *Land Policy and Regulatory Frameworks*, is the last of six modules produced by “Responsible Land Administration Teaching Essentials”, a project initiated and funded by the Global Land Tool Network (GLTN) and UN-Habitat, under the direction of Jean du Plessis. The conceptualisation phase of the project was managed by University of Twente – ITC, and the design and implementation phase by RMIT University and University of East London (in their respective capacities as leads of GLTN’s International Training and Research Institutions Cluster). The modules together form a “Structured Knowledge Base” to support a range of different kinds of learning activity within the subject of responsible land administration.

The intention is for this knowledge base to be flexibly utilised for a range of education, training and research activities at all levels. For specific use in academic teaching, each module is structured to support approximately 50 hours of study load (2 ECTS) at 3rd year university level, divided into 4 or 5 lessons, with each comprising approximately 3 hours of classroom teaching and approximately 7 hours of teacher directed self-study. The modules are designed to be nested such that the learning can explore Module 1 on its own, or Module 1 in combination with any or all of the other modules. Similarly, a teacher or trainer can use individual modules to support their classes, or all the modules if they are relevant.

Teachers and trainers using these materials are encouraged to add case studies, class discussion and/or class exercises to complement the material, depending on need and context. The material is well suited for adaptation using an ‘active learning’ approach.

Acknowledgements

The role of the partners involved in this GLTN “Teaching Essentials” project is acknowledged. They include: RMIT University, University of East London, University of Florida, University of West Indies, University of Twente, Aalborg University, Ardhi University, Technical University of Munich, NELGA (Network of Excellence in Land Governance in Africa) and UN-Habitat. The contributions of all the participants in the two-day Expert Group Meeting held in November 2016 at the University of East London, for helping to scope and frame the content of all the modules, are also acknowledged. The author of this module would like to acknowledge the contribution of Dr Robin McLaren, Director of Know Edge Ltd, UK, for reviewing earlier draft versions of the five lessons. The author is also grateful to Prof Rexford Ahene, Lafayette University, USA, for his contribution on the case study of the National Land Policy of Uganda; and to thank Prof Emeritus Paul van der Molen (University of Twente, Netherlands), for sharing his lecture notes. Lastly, the author is grateful to Jaap Zevenbergen for peer reviewing this module.

Terms of use

The modules have been peer reviewed and are made available here in Beta version for review and use by interested academics, teachers, and trainers in the design and teaching of Responsible Land Administration programmes, courses, mini-courses, lectures, or training. The modules are in PDF version for easy downloading. They can be freely used for teaching, training or learning purposes provided due credit is given to UN-Habitat, GLTN and the module authors, in accordance with the *Creative Commons Licence* indicated at <https://creativecommons.org/licenses/by-nc-sa/3.0/>. This is a living document. **Feedback is highly encouraged**, as is the development and submission of locally relevant case studies. Both can be submitted via this [link](#). These will form the basis of improvement, finalisation and eventual publication of the structured knowledge base.

About GLTN

The Global Land Tool Network (GLTN) is a dynamic alliance of more than 75 global land actors and stakeholders who subscribe to a core set of values and principles and a shared work programme to improve tenure security. We use an inclusive approach to land tenure supported by land tools: practical, innovative methods to solve problems related to land tenure. We develop, test, demonstrate and disseminate these tools through our Network. For further information visit www.gltn.net.

Module 6: Land Policy and Regulatory Frameworks

Stig Enemark¹

Rationale

A national land policy is the set of aims and objectives set by governments for dealing with land issues. Land policy is part of the national policy on promoting objectives such as economic development, social justice and equity, and political stability. Land policies vary, but in most countries, they include poverty reduction, sustainable agriculture, sustainable settlement, economic development, and equity among various groups within the society. Policy implementation depends on how access to land and land related opportunities is allocated. Governments therefore regulate land related activities, including holding rights to land, supporting the economic aspects of land, and controlling the use of land and its development. Administration systems surrounding these regulatory patterns facilitate the implementation of land policy in the broadest sense, and in well-organized systems, they deliver sensible land management and good governance (Williamson et. al., 2010, chapter 5).

Land-related problems are common in many countries around the world, and pose particularly difficult policy problems for governments. Existing policies and laws on land often pursue economic productivity at the expense of other equally important values, such as equity, sustainability, transparency and efficiency. In some countries, the ministry responsible for land focuses on delivering titles to the middle classes and to commercial concerns. They try to pursue business as usual, despite being bombarded by a range of land-related problems and crises. In other countries, the government is weak, and there is often limited capacity to handle land issues at the national level. In still more countries, conflict within the country or region prevents any systematic initiatives to solve the land problem (Handling Land, 2012, chapter 10).

Responsible approaches and initiatives, that are socially acceptable, are needed to shape policy design and implementation, and their impact upon society should be assessed.



Rural landscape, Nepal. Enemark, 2009.

¹ The author: Stig Enemark is Professor Emeritus of Land Management in Aalborg University, Denmark.

Objective

This module is designed to be 2 ECTS and includes teaching resources that support approximately 15 hours of teacher-directed tuition within the classroom or training session. A typical lesson may involve lecture material, examples, interactive exercises and group discussion and support approximately 50 hours of self-study.

Upon completion of this module, students should be able to:

- Describe the nature of various land policies (Lesson 1).
- Describe the drivers for developing such policies (Lesson 2).
- Identify components to be included in land policy formulation and land related regulations (Lesson 3).
- Assess and compare various country specific land policies and regulatory frameworks (Lesson 4).
- Explain how land policies can be enforced through sustainable land administration systems and their regulatory and institutional frameworks (Lesson 5).

Structure

Lesson 6.1	Lesson 6.2	Lesson 6.3	Lesson 6.4	Lesson 6.5
<ul style="list-style-type: none"> ▪ Defining land policy and regulatory frameworks. ▪ Understanding Land Governance ▪ The nature of land policy frameworks. 	<ul style="list-style-type: none"> • The 2030 Global Agenda; • Regional and national challenges • Monitoring and evaluation 	<ul style="list-style-type: none"> • Scope and components of land policies. • Sectoral policies and state land management • Policy-making and regulation 	<ul style="list-style-type: none"> • Land policy: the country context • Examples of National land Policies: Malawi, Cambodia, Brazil • Case study Uganda 	<ul style="list-style-type: none"> • Recapturing the relevance of land policy • Enabling Land policy processes • Assessment and capacity development

Structure of Course Material

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Lesson 6.1: Introduction to land policy and the regulatory framework	
<p>Learning objectives</p> <p>At the end of this lesson, learners should be able to:</p> <ul style="list-style-type: none"> Understand the nature and aim of land policies and how they can be used to implement principles of responsible land governance. Understand how land policies are developed and implemented. 	
Learning steps	Learning Questions
1. Defining land policy and regulatory frameworks.	<p>Reminder of the basic principles of Responsible Land Administration (Module 1)</p> <p>Land policy – what is it? Introduce basic land policy concepts and explain why a land policy framework is important.</p> <p>The regulatory framework – what is it?</p> <p>What is the role of land policy? Linking political aims and objectives and the regulatory framework dealing with land tenure, land value, land use and land development.</p>
2. Understanding Land Governance	<p>What is governance? What is good governance?</p> <p>What is land governance? Why does it matter?</p>
3. The nature of land policy frameworks.	<p>What is the nature of land policy frameworks? Can be one land policy or a range of separate land policies. Present the key areas of contents.</p> <p>Land reform – what is it? How does it relate to land policy?</p> <p>How is a land policy developed? Who are the actors? What is the land policy process?</p>
Summary	Key points of the lesson
<p>Recommended readings:</p> <p>Deininger, K. (2003): Land Policies for Growth and Poverty Reduction, World Bank. Executive Summary, p ix- xxii.</p> <p>EU (2004): EU Land Policy Guidelines - Support to land policy design and land policy reform processes in developing countries. Chapter 1-3, p. 1-10.</p> <p>FAO (2007): Good Governance in Land Tenure and Administration. FAO Land Tenure Studies No 9. Chapter 2-3, p. 5-20.</p> <p>FAO (2009): Towards Improved Land Governance. Chapter 2, p. 7-13 and chapter 4, 26-33.</p> <p>GLTN / UN-Habitat (2012): Handling Land: Innovative tools for land governance and secure tenure, Chapter 10, p. 115-122.</p> <p>Williamson, Enemark, Wallace, and Rajabifard (2010): Land Administration for Sustainable Development, ESRI Press Academic, Redlands, California, Chapter 5, p. 114-133.</p>	

6.1.1 Defining Land Policy and Regulatory Frameworks

The challenges facing the land sector are significant and complex, and implementation of responsible land administration principles requires great care. There are no quick solutions, and the effect and impact of land administration depends on many contextual issues in different cases. Effective solutions involve going deeper into the actual tenure forms in existence, with solutions building on what are already there and in response to particular historical, cultural, and legal context. The basic principles of Responsible Land Administration (as stated in Module 1) include:

<ul style="list-style-type: none"> • Respect for human rights and dignity • Non-discrimination • Pro-poor • Equity and justice • Gender responsiveness 	<ul style="list-style-type: none"> • Holistic and sustainable • Effective consultation and participation • Adopting the rule of law • Transparency • Accountability 	<ul style="list-style-type: none"> • Continuous improvement • Affordability of land administration services • Adopting systematically large scale and scalable approaches
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Figure 6.1.1. The basic principles of Responsible Land Administration (Module 1, 25)

Responsible Land Administration is a quality term or an ideal that may be difficult to achieve, the principles above seek to identify the values on which the term is build. Such values should be embedded in national policies addressing the land issues – they should explicitly shape the national land policies.

Land policy – what is it?

A “policy” is an expression of political aims and objectives concerning a specific issue or area. It is a statement of intent, and is implemented as a procedure or protocol. A policy is then a deliberate system of principles to guide decisions and achieve rational outcomes. Policy differs from rules or law. While law can compel or prohibit behaviours, policy merely guides actions toward those that are most likely to achieve a desired outcome. Policies can then be understood as political, managerial, financial, and administrative mechanisms arranged to reach explicit goals (Wikipedia). A policy is different from a strategy – a policy may include a range of specific strategies to achieve the stated aims and objectives.

A national land policy is the set of aims and objectives set by governments for dealing with land issues.

“Land policy is part of the national policy on promoting objectives such as economic development, social justice and equity, and political stability. Land policies vary, but in most countries, they include poverty reduction, sustainable agriculture, sustainable settlement, economic development, and equity among various groups within the society. Policy implementation depends on how access to land and land related opportunities is allocated. Governments regulate land related activities, including holding rights in land, supporting the economic aspects of land, and controlling the use of land and its development. Administration systems surrounding these regulatory patterns facilitate the implementation of land policy in the broadest sense, and in well-organized systems, they deliver sensible land management, good governance, and sustainability.” (Williamson et. al., 2010, 117-118).

Land policy consists of combination of socio-economic prescriptions that dictate how the land is to be used and how the benefits from the land are to be shared (UNECE, 2005, 60). This definition recognizes that the land issue comprises both social, economic and legal measures to allocate benefits, not only in the sense of access to land as such, but also access to land related benefits.

“ ... insofar as the rules governing access to and the distribution of the benefits from one of the economy’s main assets, land policy is important for poverty reduction, governance, economic growth, and environmental sustainability (Deininger, 2003, 178). This statement on land policy, similarly, addresses economic and social aspects of land related benefits.

By transferring the term “Responsible” (see Figure 6.1.1) to the policy area, responsible land policies should address various levels of government, e.g. also including traditional authorities in customary areas, and should address the various social levels in society. E.g., will access to land and land-related benefits only be allocated to the powerful elites ... or will it also include allocation to the poor, and in both urban and rural areas? This makes the land issue a highly political issue, as allocation of access in land comprises choices about the distribution of benefits from one of the country’s main assets.

Why is land policy important?

Land policies are the foundation for dealing with the land issue. Land policy can be understood as the result of choices and actions of policymakers, who contemplate land use, public interests, and rights. Land policy is then a manifestation of a social contract with regard to land use (Davy, 2012, 31).

“Within any jurisdiction, whether it is a community or a country, there are multiple development objectives and multiple stakeholders who have interests that range from basic survival to personal enrichment to societal well-being” (FAO, 2009, 10)..

National land policies provide guidance in dealing with such conflicting interests, in principle for the benefit of the country as a whole. As land resources are finite within a jurisdiction, there is often competition between stakeholders over access to and use of the resources.

“Land policy and governance is fundamentally about power and the political economy of land. Who benefits from the current legal, institutional and policy framework for land? How does this framework interact with traditional authorities and informal systems? What are the incentive structures for, and what are the constraints on, the diverse land stakeholders? Who has what influence on the way that decisions about land use are made? Who benefits and how? How are the decisions enforced? What recourse exists for managing grievances?” (FAO, 2009, 10).

This policy aspect is also highlighted in (GLTN/UN-Habitat, 2012): “Existing policies and laws on land often pursue economic productivity at the expense of other equally important values, such as equity, sustainability, transparency and efficiency. Responsible or Pro-Poor Land Policies should ensure that these neglected issues are incorporated in improved policymaking processes. In particular, that means reducing the overall role of the state and investing more power in lower levels of government and in citizens at large.” (GLTN/UN-Habitat, 2012, 117).

Many countries have not changed their land policy and land management approaches to fit the 21st century. They tend to share several problems:

- **Over- centralization:** Responsibilities for land are concentrated in the central government and not shared with the private sector or NGOs. Decisions are made far from the poor populations that are supposedly served.
- **Lack of coordination:** land related organizations are poorly coordinated and lack capacity to deal with complex problems.
- **Low level of participation and lack of equity:** Lack of stakeholder consultation. Existing policies and laws largely neglect to integrate equity, efficiency and gender concerns.
- **Corruption and poor governance:** Lack of transparency, high levels of corruption and poor governance. Accountable and transparent institutions are rare, and administration procedures are lengthy and bureaucratic.
- **Limited capacity in land institutions.** A low level of capacity in land institutions poses huge challenges.
- **Conflict among competing actors:** Vested interests and power differences mean that the principles of equity and justice are neglected. Land institutions lack the capacity and incentive to find harmonious solutions to disputes

Figure 6.1.2: Why Land Policy Matters (Adapted from GLTN/ UN-Habitat, 2012, 115-116).

This is also supported by the World Bank stating: “Land Policies are seen of fundamental importance to sustainable growth, good governance, and the well-being of and the economic opportunities open to rural and urban dwellers – particularly the poor” (Deininger, 2003, Foreword, p. ix). This World Bank policy research report rests on three principles that underpin the importance of land policy:

- **“First**, providing secure tenure to land can improve the welfare of the poor, in particular, by enhancing the asset base of those, such as women, whose land rights are often neglected. At the same time, it creates the incentives needed for investment, a key element underlying sustainable economic growth.
- **Second**, facilitating the exchange and distribution of land, whether as an asset or for current services, at low cost, through markets as well as through nonmarket channels, is central to expediting land access by productive but land-poor producers and, once the economic environment is right, the development of financial markets that rely on the use of land as collateral.
- **Third**, governments have a clear role to play in promoting and contributing to socially desirable land allocation and utilization. This is clearly illustrated by farm restructuring in the context of de-collectivisation and land reform and post conflict land policy in economies with a highly unequal distribution of land ownership where land issues are often a key element of social strife. Appropriate incentives for sustainable land use are also required to avoid negative externalities and irreversible degradation of non-renewable natural and cultural resources.” (ibid, ix-x)

The World Bank Policy Research Report presents a strong argumentation for the need of sustainable land policies and secure land rights, e.g. in relation to economic growth, poverty reduction, good governance, efficient land markets, socially desirable land use, environmental sustainability, etc.

The regulatory framework – what is it?

Regulations are legal provisions used as instruments to express and implement government policies and strategies within specific areas. Within the land sector, such regulations relate to controlling the rights in land, the valuation and taxation of land and property, the planning and control of land use and natural resources, and the process of land development. The regulatory framework for land is then the infrastructure of such regulations and institutional arrangements forming a land administration system. These instruments or land administration functions are covered in some detail in Module 1-5.

Every system of social order is based on a framework of laws that reflect the constitution of the country, govern the administrative process and express the rights and obligations of the citizen. The law is a complex set of rules that have evolved within each society to ensure its orderly running and the peaceful behaviour of its members. The law may take different forms where there are various legal traditions, based around typically common law (Roman, Latin) and civil law (German, Anglo). Other legal traditions relate to Islamic, Jewish, Traditional and Asian law. Colonisation spread different legal systems (especially common and civil law) throughout the world, each of which approached land administration design in different ways (see Module 1). (Williamson, et al., 2010, 58-59).

“In simple terms, the civil law tradition employs abstract statements of legal principles while, by contrast, common law systems are based on written statutes and judicial systems (often referred to as “judge-made law”). The existence of these two distinctive legal traditions has resulted in different concepts with regard to the manner in which rights and interests are defined and the way in which problems are addressed. This is particularly so in the field of property law, although the differences between civil law and common law systems should not be exaggerated. Today the historical factors that contributed to the development of the two legal systems have lost much of their force. Both face similar social and economic problems and regard the law as an instrument to serve and order social aims and objectives” (ECE, 2005, 29).

There are four main areas of the law that particularly affect the land administrator:

- The law of ‘real’ property that affects the types of tenure rights and dealings in land;
- The laws on land reform such as the privatization of State-owned land, the restitution of former private land, and land consolidation;
- The laws that govern the conduct of land administration such as the regulations that control the operation of the cadastre and land registration; the valuation system; the land use planning system; and land development through construction works, such as of buildings and infrastructure.
- The laws that regulate roads, protection of the environment and management of natural resources, such as agricultural land, forests, water, minerals, etc.
- Other areas of the law, such as those relating to bankruptcy, inheritance and matrimony, also affect real property and thus the work of the land administrator.

(adapted from ECE, 2005, 29).

These land laws and regulations are delegated to different levels of government and institutions and form the operational component for implementing national land policies within specific areas of operation as illustrated in figure 6.1.3.

What is the role of land policy?

“All nations have to deal with the management of land. They have to deal with the four land administration functions of land tenure, land value, land use, and land development in some way or another. A country’s capacity may be advanced and combine all the activities in one conceptual framework supported by interactive land information systems. More likely, however, capacity will involve very fragmented and analogue approaches. Different countries will also put varying emphasis on each of the four functions, depending on their cultural bias and level of economic development.” (Williamson, et al. 2010, 118).

The Land Policy Framework establish the link between political aims and objectives, e.g. in relation to poverty reduction, food security, sustainability, etc., and the regulatory framework of operation as embedded in the land administration systems dealing with land tenure, land value, land use and land development. This regulatory framework is facilitated by inventories of land parcels / spatial units, land rights, land use, and natural resources combining the built and natural environment. This is illustrated in figure 6.1.3 below.

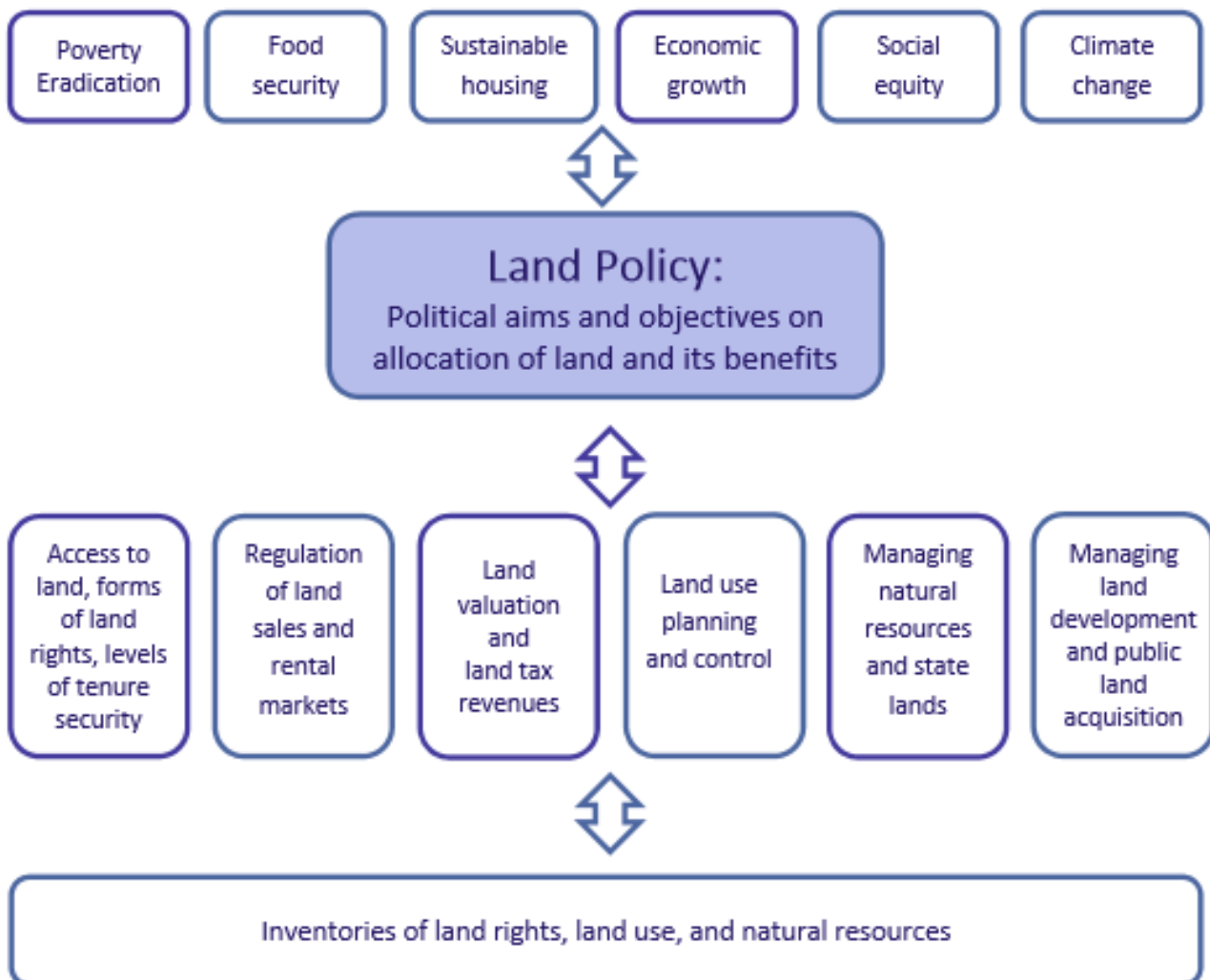


Figure 6.1.3. The Role of Land Policy (adapted from Molen, et al., 2004)

6.1.2 Understanding Land Governance

What is Governance?

“Governance is the manner in which power is exercised in the management of a country’s economic and social resources for development” (World Bank, 1992, 1, and UNDP, 1997). This definition puts the emphasis on the leadership role of the state. Over recent years, this definition has been broadened to include also the forms in which public and private sector actors interact.

“Governance is the process of governing. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens, and how society obliges its members to observe its rules and laws” (FAO, 2007, 5). In this regard, governance in land tenure and administration cannot be separated from governance of other sectors.

What constitutes good governance? Ideas about good governance are derived from work done on human rights and fundamental freedoms. Certain aspects of good governance are embedded in international human rights law. “The avoidance of corruption is one obviously aspect of good governance. However, features of good governance also include accountability, political stability, government effectiveness, regulatory equity and rule of law as well as control of corruption. Good governance means that government is well managed, inclusive, and results in desirable outcomes. The principles of good governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement and security. Governance can be poor if government is incorruptible but tyrannical; or is democratic yet incompetent and ineffective.” (FAO, 2007, 6-9).

What is land governance?

“Land governance is about the policies, processes and institutions by which land, property and natural resources are managed.” (FIG / WB, 2010, 10). This includes decisions on access to land; land rights; land use; land development. Land governance is about determining and implementing sustainable land policies.

Land governance and management covers all activities associated with the management of land and natural resources that are required to fulfil political and social objectives and achieve sustainable development. This relates specifically to the legal and institutional framework for the land sector. The operational component of the land management concept is the range of land administration functions that include the areas of land tenure, land value, land use, and land development. All of these are essential to ensure control and management of physical space and the economic and social outcomes emerging from it.

(FAO, 2009, 9-10) suggests this definition:

“Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed.”

“There is strong connection between land governance and land policies. Land policy is the foundation on which the systems in a country for land management, land administration, land-use and development are built. Policy endorsed by a high authority should be based on principles of good governance focusing on efficiency, equity and accountability. The implications of weak governance from deficiencies in policy include tenure insecurity; encroachment and exclusion on access to land; informal modes of service delivery; limited land markets; increased administrative corruption and state capture, and increased land disputes. Functional ambiguity among institutions often equates to agencies acting unilaterally and out of touch with community expectations and desires” (Burns and Dalrymple, 2008, 7-8).

Land Governance – why it matters?

“When land governance is weak, the powerful are able to dominate the competition for scarce land resources. In an extreme form, corruption can occur on a grand scale through “state capture”. The state can be “captured” by individuals, families, clans, groups or commercial companies who direct public policy for their own benefit. Those with power may illegally transfer state lands and common lands to themselves or their allies. They may implement land redistribution policies and laws in their favour, and give unjust compensation to those whose land is acquired. They may make favourable decisions to change land use that cannot be justified on objective grounds. Agreements may be made in secret by a small number of people: by the time the public becomes aware of decisions it may be too late to intervene”. (FAO, 2009, 10-11)

“By contrast, when land governance is effective, equitable access to land and security of tenure can contribute to improvements in social, economic and environmental conditions. With good governance, benefits from land and natural resources are responsibly managed and the benefits are equitably distributed. In cities, effective land management reduces social tensions and promotes economic growth and poverty reduction. When good governance exists, decision-making is more transparent and participatory, the rule of law is applied equally to all, and most disputes are resolved before they degenerate into conflict. Improved governance can result in land administration being simplified and made more accessible and effective.” (ibid, 11).

6.1.3 The Nature of Land Policy Frameworks

“National land policy formulation is the most fundamental level of decision-making with respect to land. In this sense, it represents the ultimate land governance process. All major land governance issues should be discussed and debated, including access to land, tenure security, control of natural resources, women’s land rights, institutional roles and responsibilities, resolution of disputes, etc. All stakeholders, including civil society, should be involved in the identification of issues and potential solutions. The outcomes from this process are intended to have far-reaching impacts on who can use land, how and for what development objectives” (FAO, 2009, 27)

It should be recognized, that many countries do not have a comprehensive National Land Policy; rather, they have different policies for different types of land management sub-sectors, such as property rights, spatial planning and urban development, agriculture, the environment and natural resources, etc. (see lesson 6.3), and each minister may believe that they have responsibility for land policy. This is found in many developed countries, with a long tradition for handling land as a key societal asset. However, the lack of an overarching

national land policy often means that the various sectoral policies are not coordinated and in line with overall political objectives, which may lead to conflict of interests.

In contrast, most developing countries need to take a more holistic approach to address the land issue, in order to highlight the governmental and political economy dimensions that can be found in any decision-making process related to land. “A land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. (EU, 2004, 3).

“Land policy lies at the heart of economic and social life and environmental issues in all countries. The distribution of property rights between people has a tremendous impact on both equity and productivity. Similarly, land policy is also crucial for environmental sustainability as it can create incentives for sustainable land-use and environmental management. Land policy is contained in texts issued by governments, and is further developed through legislation, decrees, rules and regulations governing the operation of institutions established for the purposes of land administration, the management of land rights, and land use planning. To be effective, land policy must propose a practical and coherent set of rules, institutions, and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups” (ibid, 3). A comprehensive national land policy typically has to reflect the county context and the way the concept of land is understood within the culture. Figure 6.1.4 shows some typical and key areas of contents:

National Policy Framework – key areas of contents.	
Country context, rationale Vision, Objectives and Principles Land Tenure Framework Categories of land Categories of land tenure Access to land rights Land Administration Framework Land surveying and mapping Land registration Land and credit markets, Land valuation and taxation	Land Use Management Framework Land use planning and regulation Natural resources Environmental management State land management Institutional Framework State, regional and local authorities Land boards, tribunals, land courts Land acquisition and compensation Implementation Framework Timeline, costs, monitoring, evaluation

Figure 6.1.4. Natural Land Policies can be structured in many ways and the outline may vary considerably depending on the country context. Adapted from the National Land Policy of Uganda (see Lesson 6.4).

“Land tenure is at the heart of a number of rural development issues. Access to land is linked to some basic economic and social human rights, such as the right to food. Land tenure has strong linkages to poverty reduction and food security, economic development, public administration and local government, private contract law, family and inheritance law and environmental law (to mention but a few). Given the far reaching consequences of land policy reform, an explicitly multi-disciplinary approach is required to ensure that the varied implications of reform programmes are well understood and that the needs of different stakeholder groups, in particular the poor and vulnerable, can be effectively accommodated.” (EU, 2004, 4).

In this regard, the EU report provide an understanding of the links between land and other major policy areas such as poverty reduction; Human rights and social justice; Gender equity; Agricultural development; Conflicts and post-conflict recovery; Land administration and governance; Local government and decentralisation; Taxation; Environment; and Land use planning (ibid, 4-10).

Land Reform – what is it?

Land reform may consist of a government-initiated or government-backed property redistribution, generally of agricultural land. Land reform can, therefore, refer to transfer of ownership from the more powerful to the less powerful, such as from a relatively small number of wealthy (or noble) owners with extensive land holdings and carried out with or without compensation. Land reform may also entail the transfer of land from individual ownership—even peasant ownership in smallholdings—to government-owned collective farms, or the exact opposite: division of government-owned collective farms into smallholdings. The common characteristic of all land reforms, however, is modification or replacement of existing institutional arrangements governing possession and use of land (Wikipedia).

“The greater the asymmetry of power in an agrarian society, the greater the concentration of rural land in the hands of a relatively small number of large landowners. In an urban context, the asymmetry of power is also manifest: in Nairobi, Kenya, for example, informal settlers make up 50 percent of the city’s population, yet occupy only 5 percent of the land. It is not just that the powerful are able to acquire large landholdings; their political influence allows them to create incentives to hold on to the land, for example through the introduction of distortions such as credit subsidies, tax exemptions, and favoured access to input and output markets, as well as to infrastructure such as major irrigation systems. Elites are also able to capture the land registry, controlling who does – and who does not – have legally recognized land rights. A highly unequal distribution of agricultural land and a strong demand for that land by the landless and land poor make for a volatile mix. Today it is widely recognized, including in the work of the World Bank that without some form of equity in land distribution, poverty reduction and economic growth will remain elusive” (FAO, 2009, p. 29-30).

Perhaps the most monumental efforts in land redistribution and reform followed the failure of command economies in Eastern Europe in 1989, leading to substantial rebuilding of land administrative systems aiming to reflect the EU standards of functioning market economies, including the processes of returning state and collective owned land to private ownership (see Lesson 6.2).

How is a land policy developed?

“There are several important governance and political economy issues associated with a national land policy processes, see Figure 6.1.6 for an overview of a generic approach to managing a land policy process. Foremost is the design and implementation of a credible and inclusive process of consultation. A related challenge is to ensure that specific efforts are made to support the effective participation of women and vulnerable groups such as pastoralists, indigenous groups, informal settlements residents, sharecroppers, etc. In addition, maintaining the momentum and collaboration required for land policy processes – often lasting some five years – can be daunting. Finally, but no less importantly, it must be acknowledged that implementation of national land policies has not yet been realized in many countries that have otherwise produced progressive policies through credible processes.” (FAO, 2009, 27).

The Land Policy Process – an Overview

Managing a land policy process is a complicated task and may involve some or all of the following elements:

- **Establish a Coordination Unit to plan and manage the process.** This can be based in a lead land Ministry, in an independent body such as a Land Commission or another multi-stakeholder entity. The choice of coordinating unit will inevitably include some trade-offs.
- **Collect background information.** Land touches many development issues and includes many stakeholders. Gathering information on the laws, institutions, issues and actors is critical to create a common understanding of issues and options.
- **Consult extensively.** All stakeholders should be enabled to contribute their perspective to the debate. It is important to take the debate out of national or regional centres and directly to the grassroots.
- **Ensure all stakeholder groups are represented.** Participant ownership and buy-in to the process is critical. Strong civil society participation should be seen as an asset, not a liability.
- **Do not shy away from politics.** It is important that political positions are tabled early and understood by everyone. Without dealing with the politics, trust will be difficult and it will not be possible to move to the technical issues.
- **Develop an action plan.** A road map of both political and technical outputs should be developed to guide the reform process. It can provide many entry points for action that can accommodate slippage by refocusing from one area to another.
- **Develop a monitoring and evaluation framework.** This should include a framework of indicators that enable monitoring implementation and evaluation of the impact against the political aims and objectives stated in the National Land Policy.

Figure 6.1.5. The Land Policy Process - an Overview.
(Adapted from UN-Habitat, 2007, 8-9; FAO, 2009, 27-28).

Summary

This introductory lecture to land policy and the regulatory framework has focused on understanding the key concepts of land policy, land governance, regulatory frameworks and their interrelation.

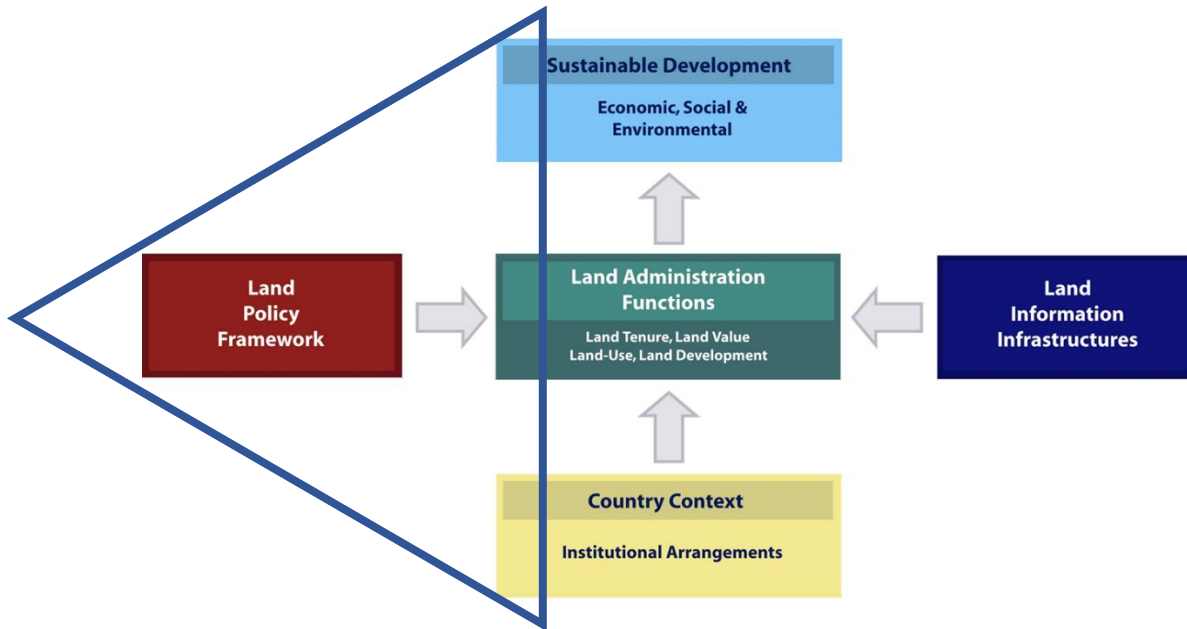


Figure 6.1.6. The land management paradigm, (Enemark, 2005; Williamson, et al., 2010, 117). Within the country context, land management activities may be described by three components: land policies, land information infrastructures and land administration functions that support sustainable development. The land policy component, as discussed in this module, is highlighted.

Key points of the lessons include:

- Understanding the term Land Policy and why it is important.
- Understanding the role of Land Policy in providing the link between political objectives, and the regulatory framework of operation as embedded in the land administration systems.
- Understanding the term Governance and what is meant by Land Governance and why it matters.
- Understanding the nature and core contents of National Land Policies and the Land Policy Process.

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Lesson 6.2: Drivers for developing land policies and regulatory frameworks	
Learning objectives By the end of this lesson students should be able to: <ul style="list-style-type: none"> List and explain the drivers for land policy development Explain the linkage between the drivers and land policy management and implementation Describe how the global and regional drivers are monitored and assessed. 	
Learning steps	Learning Questions
The 2030 Global Agenda.	What is the 2030 Global Agenda? Present the Sustainable Development Goals that include global targets related to land policies. These global targets are driving the need for innovation in land policies and land administration systems. This also goes for the new urban agenda and the wider global agenda related to responsible governance of tenure, human rights, and climate change and natural disasters.
Regional and national challenges	Regional challenges and drivers for land policy? Provide an overview of the land policy and land reform agenda in different regions of the world: Eastern Europe, Asia, Latin America, and Africa. National challenges and drivers for land policy? Explain the need for developing adequate land policies and related regulatory frameworks.
Monitoring and assessment	How are the drivers monitored and assessed? Explain the use of indicators and the link to data collection through adequate and efficient land administration systems.
Summary	Key points of the lesson
Recommended Reading: AUC/UNECA/ADB (2009): Framework and Guidelines on Land Policies in Africa, Chapter 1-3, p.1- 21. Enemark, S., McLaren, R., and Lemmen, C., (2016): Fit-for-purpose land administration - guiding principles for country implementation, GLTN / UN-Habitat, Nairobi. Chapter 1-2, p. 2-14. FAO (2012): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs). Part 1-2, p. 1- 10. FIG/GLTN (2010): The Social Tenure Domain Model. FIG publication no 52, p. 5-17. GLTN/UN-Habitat (2012): Handling Land - Innovative tools for land governance and secure tenure, GLTN, IIRR, UNON, Nairobi, Kenya. Chapter 10, p. 115-122. UN (2015): Transforming our World: the 2030 Agenda for Sustainable Development. UN- General Assembly resolution on 25 September 2015, p. 1-14. UN-Habitat (2016): Habitat III - The New Urban Agenda, p. 1-4.	

6.2.1 The 2030 Global Agenda

The global agenda is threefold and has changed over recent decades. In the 1990s, the focus was on sustainable development; in the 2000s, the Millennium Development Goals (MDGs) were adopted as the overarching agenda; and in the 2010s there is increasingly focus on climate change and related challenges such as natural disasters, food shortage and environmental degradation, see Figure 6.2.1, left. Good land management and governance are key means in support of the global agenda. If a hypothetical map of the world is generated by using the Gross Domestic Product as the scale for territorial size, the so-called western regions North America, Western Europe, South Korea and Japan would “balloon”, while other regions such as Africa and Central Asia would almost disappear (UNEP, 2007). The global agenda is very much about bringing this map back to scale through poverty eradication, improving education and health, facilitating economic development, encouraging good governance, and ensuring sustainability.

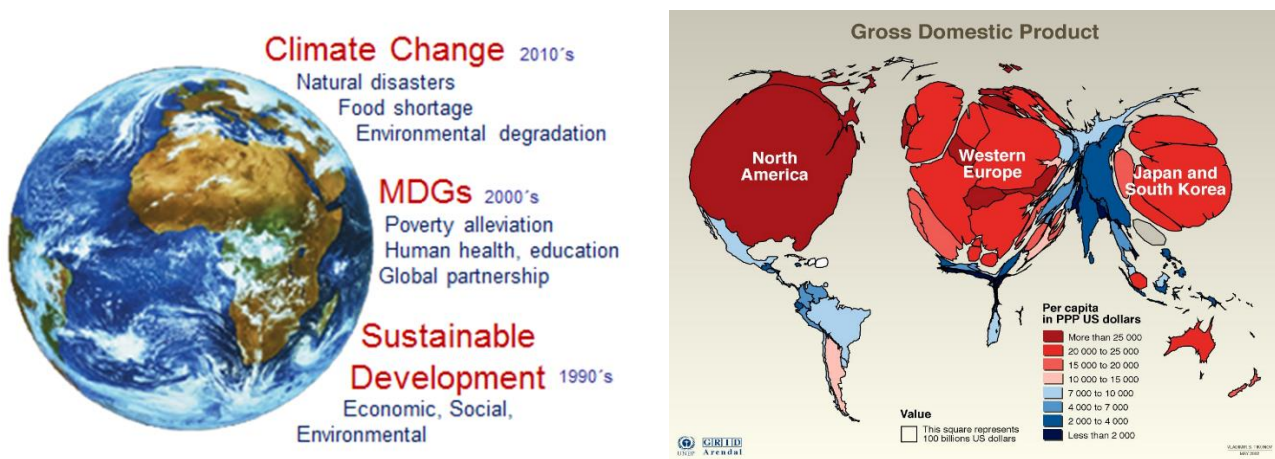


Figure 6.2.1. Left: The evolution of the global agenda. Right: Map of the world using the GDP as the scale

The Sustainable Development Goals

There is a broad agreement that, while the MDGs provided a focal point for governments, they were too narrow. The MDGs are now replaced by the Sustainable Development Goals (SDGs) with a new, universal set of 17 Goals and 169 targets that UN member states are committed to use to frame their agenda and policies over the next 15 years (2016-2030). The goals are action oriented, global in nature and universally applicable. Targets are defined as aspirational global targets, with each government setting its own national targets guided by the global level of ambition, but taking into account national circumstances. The goals and targets integrate economic, social and environmental aspects and recognise their interlinkages in achieving sustainable development in all its dimensions.

The adopted UN declaration on “Transforming our world: the 2030 Agenda for Sustainable Development” includes the following statement: “We resolve, between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources. We resolve also to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities” (UN, 2015, 3).



Figure 6.2.2. The Sustainable Development Goals

While the MDGs did not mention land directly, the new SDGs include six goals with a significant land component mentioned in the targets. For example, Goal 1 calls for ending poverty in all its forms everywhere, and target 1.4 states that by 2030 all men and women will have equal rights to ownership and control over land and other forms of property. Similarly, the land component is referred to in target 3 of Goal 2 on ending hunger, and, more generally in Goal 5 on gender equity, Goal 11 on sustainable cities, Goal 15 on life on land, and Goal 16 on peace, justice and strong institutions. These goals and targets will never be achieved without having good land governance and well-functioning countrywide land administration systems in place.

The SDGs, thereby, provide a framework around which governments, especially in developing countries, can develop policies and overseas aid programmes designed to alleviate poverty and improve the lives of the poor, as well as a rallying point for NGOs to hold them to account. In other words, the SDGs is a key driver for countries throughout the world – and especially developing countries – to develop adequate and accountable land policies and regulatory frameworks for meeting the goals.

The Wider Global Agenda

The **New Urban Agenda** (UN-Habitat, 2016) is the outcome document agreed upon at the Habitat III cities conference in Quito, Ecuador, in October 2016. The new agenda replaces the former Habitat Agenda: Istanbul Declaration on Human Settlements, from the Habitat II conference, 1996. This former agenda called for adequate shelter for all and sustainable human settlements in an urbanised world, and has influenced over 100 countries to adopt constitutional rights to adequate housing. The former agenda also included in the MDGs Goal 7 with a target of achieving cities without slum. The New Urban Agenda is a response to the fact that the majority of the world's population now live in urban areas, and that this amount is expected to increase to 70 per cent by 2050. It is recognised that over 70% of the urban growth currently happens outside of the formal planning process and that 30% of urban populations in developing countries are living in slums or informal settlements. In Sub-Saharan Africa, 90% of all new urban settlements are taking the form of slums (FIG / WB, 2010).

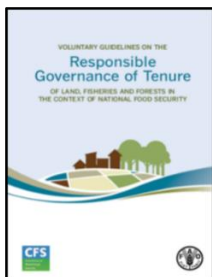
New Urban Agenda should be seen as an extension of the 2030 Global Agenda. This is reflected in the list of key commitments as published by the (UN, 2016a) stating that “the new urban Agenda sets a new global standard for sustainable urban development, and will help us rethink how we plan, manage and live in cities. The New Urban Agenda is a roadmap for building cities that can serve as engines of prosperity and centres

of cultural and social well-being while protecting the environment. The Agenda also provides guidance for achieving the Sustainable Development Goals and provides the underpinning for actions to address climate change. Now it is up to national governments and local authorities to implement the Agenda, with technical and financial partnerships and assistance from the international community”



Figure 6.2.3. Lagos, Nigeria is one the fastest growing cities in the world with slum areas expanding into the waters. Photo: Enemark, 2009.

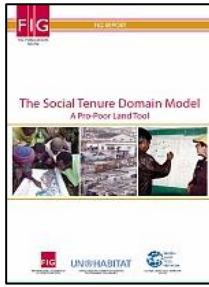
Responsible governance of tenure is now incorporated as part of the global agenda through the Committee on World Food Security’s Voluntary Guidelines on Responsible Governance of Tenure (FAO, 2012). These Guidelines are an international “soft law instrument” that represents a global consensus on internationally accepted principles and standards for responsible practices.



The Guidelines outline principles and practices that governments can refer to when making laws and administering land, fisheries and forests rights. While the Guidelines acknowledge that responsible investments by the public and private sectors are essential for improving food security, they also recommend that safeguards be put in place. These protect tenure rights of local people from risks that could arise from large-scale land acquisitions (land grabbing), and also to protect human rights, livelihoods, food security and the environment.

The Guidelines promote secure tenure rights and equitable access to land as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. The guidelines thereby place tenure rights in the context of human rights, such as the right to adequate food and housing. With the help of the Guidelines a variety of actors can determine whether their proposed actions and the actions of others constitute acceptable practices.

Landownership and secure tenure can be a vital source of capital, which opens personal credit markets, leads to investments in land and buildings, provides a social safety net, and transfers wealth to next generations. However, in several developing countries most people do not have legal documents for the land they occupy or use and thereby fall outside the formal management system. This means that most decisions are made without comprehensive information. This causes dysfunctions in the management of land, from the household up to government level, which impair the lives of millions of people (GLTN/UN-HABITAT, 2012).



UN-HABITAT has developed an innovative approach to addressing the land tenure issue through **the Social Tenure Domain Model** (FIG/GLTN, 2010). This includes a “scaling up approach” with a range of steps from informal to more formalised land rights. This continuum of land rights does not mean that societies will necessarily develop into freehold tenure systems, but rather that each step in the process can be formalised, providing a stronger protection than at earlier stages. This ensures that legitimate rights, such as customary tenure, are recognised.

The Universal Declaration of **Human Rights** (UN, 1948) is stating the universal rights of human beings based on the principle of respect for the individual – rights that can be enjoyed by everyone simply because of being alive. In relation to land and governance, the Declaration states, in simple words, “that everyone has the right to possess property (security of tenure) and the right to adequate food, clothing and housing”. This is interpreted by the UN as merely a social right to “minimal property”. However, the right to housing should not be understood in a narrow sense, such as shelter. It should rather be seen as the right to live somewhere in security, peace and dignity. The right to adequate housing therefore cannot be viewed in isolation from other human rights contained in the Universal Declaration (Enemark, et.al. 2014).

The issue of **climate change** is included in the SDGs Goal 13 with some specific targets. However, climate change is also a global agenda issue in itself. Mitigation refers to efforts and means for reducing the anthropogenic drivers such as greenhouse gas emissions from human activities – especially by reducing emission of carbon dioxide (CO₂) related to use of fossil fuel. These emissions stem from consumption that of course tends to be higher in rich industrialized countries. The impact of this high level consumption in terms of global warming, tend to be worse for the poorest countries who do not have the resources for protection against the consequences such as possible sea-level rise, drought, floods, etc. Loss of healthy life years as a result of global environmental change is predicted to be 500 times greater in poor African populations than in European populations.

On the other hand, at the national level, the issue of climate change adaptation does not necessarily relate to the inequity between the developed and less developed countries. Adaptation to climate change can be achieved to a large extent through building sustainable and spatially enabled land administration systems. Such integrated land administration systems should include the perspective of possible future climate change and any consequent natural disasters. One of the elements in achieving climate-resilient urban development and sustainable rural land use is the degree to which climate change adaptation and risk management are mainstreamed into two major components of land governance, namely: securing and safeguarding of land rights; and planning and control of land use. In this regard, responsible land governance should be underpinned by FFP land administration systems that include security of tenure rights as well as effective land-use planning and control (Mitchell et al., 2015).

6.2.2 Regional and National Challenges

Next to the global drivers as described above, there is a range of regional and national drivers for land policy development. Such drivers more specifically reflect the regional and country context in terms of history, colonial legacy, economic development, post-conflict situation, etc.

Regional challenges and drivers for land policy?

The focus on land policies as well as the context vary between regions of the world. Below is a brief description of the ECA region, Asia and Latin America. This is followed by a more comprehensive introduction to the African Region with its recent strong focus on land policy initiatives.

In the **European and Central Asia (ECA) region**, the focus over recent decades has been on land reform following the dramatic change in 1989 from a state-controlled regime to a market based economy. A good overview is found in (Adlington and Stanley, 2009) that gives an excellent overview of the 37 World Bank projects supporting the region that has seen a greater level of land and property redistribution than has been experienced anywhere else in history. It is stated that: “The overriding and predominate policy behind the projects and the reforms was to rebuild the systems of secure real estate tenure by developing, within a framework of laws, good systems of real estate registration and cadastre. The World Bank has recognized that no country can sustain stability within its boundaries, or economic development within the wider world, unless it has a real estate rights policy that promotes internal confidence between its people, its commercial enterprises and its government. Establishing trusted and efficient systems would make possible the re-establishment of private land rights for citizens and businesses. Such systems are in turn making possible the development of a property and mortgage market. This is the essential foundation for a functioning market economy where the property assets of all players are secure”. (ibid., Executive Summary).

A more detailed analysis and comparison of the different land reform approaches used is found in (Hartvigsen, 2015: Land Reform and Land Consolidation in Central and Eastern Europe after 1989). “The two fundamentally different overall approaches to land reform in the CEE countries have been restitution of land rights to former owners and distribution of land rights to the rural population. Many and often contradictory factors such as historical background, land ownership situation at the time of collectivization and ethnicity have been important while designing the land reform process. In all the countries, considerations on equity and historical justice have been important. Restitution can establish historical justice but has often not led to equity while it is opposite with distribution. As a general rule, the countries have either restituted land to former owners or distributed the state agricultural land to the rural population. None of the countries have applied both as a main land reform approach.” (ibid, 171), see figure 6.2.4.

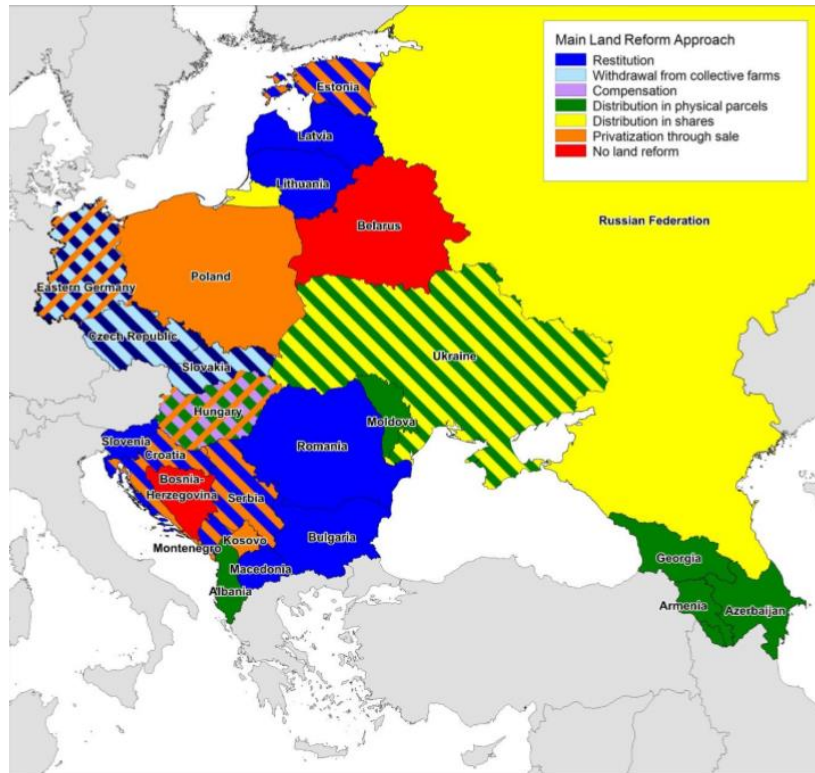


Figure 6.2.4. The main land reform approaches used in Central and Eastern Europe after 1989.
(Hartvigsen, 2015, 173).

In the **Asian region** – as in Africa and Latin America – the land tenure systems and legal frameworks have been influenced by its colonial past. The ILC publication: Land Governance in Asia (ILC, 2013a) provides an overview of the range of land reform programmes in Asian countries, and an understanding of the current debates on land.

“After gaining their independence, at least 22 Asian countries attempted to implement land reform programmes in between 1945 and the 1980s. Land reforms played an important part role in state building, characterised by inward-looking economic policies. However, in most cases it was socio-political reasons that provided the critical push for state-led reforms. Over the years, market forces brought about a gradual re-concentration of land in many developing countries in Asia, including those where land redistribution had been implemented. Starting in the late 1980s, there was a resurgent focus on land reform in development policy discourse. However, much of this new discourse about land policy seemed to highlight considerations of “economic efficiency”, relegating issues of “equality” and “distributive justice” as secondary” (ibid, 10).

Contemporary debates about land policy across Asia might be seen in terms of a number of dominant and inter-related themes such as: the unfinished task of past land reforms; the viability of improving access for poor people; the debate of “market-assisted land reform”; the issue of women’s access to land; the longstanding issue of restitution and land rights for Asia’s about 260 million indigenous people; the issue of tenure reforms for forests and “public domain” lands; the recent phenomenon of large-scale foreign land acquisitions; the uncertain future role of Asia’s small farms; and, finally, the emerging discussion about the potential direct effects of climate change (ibid, 10-11).

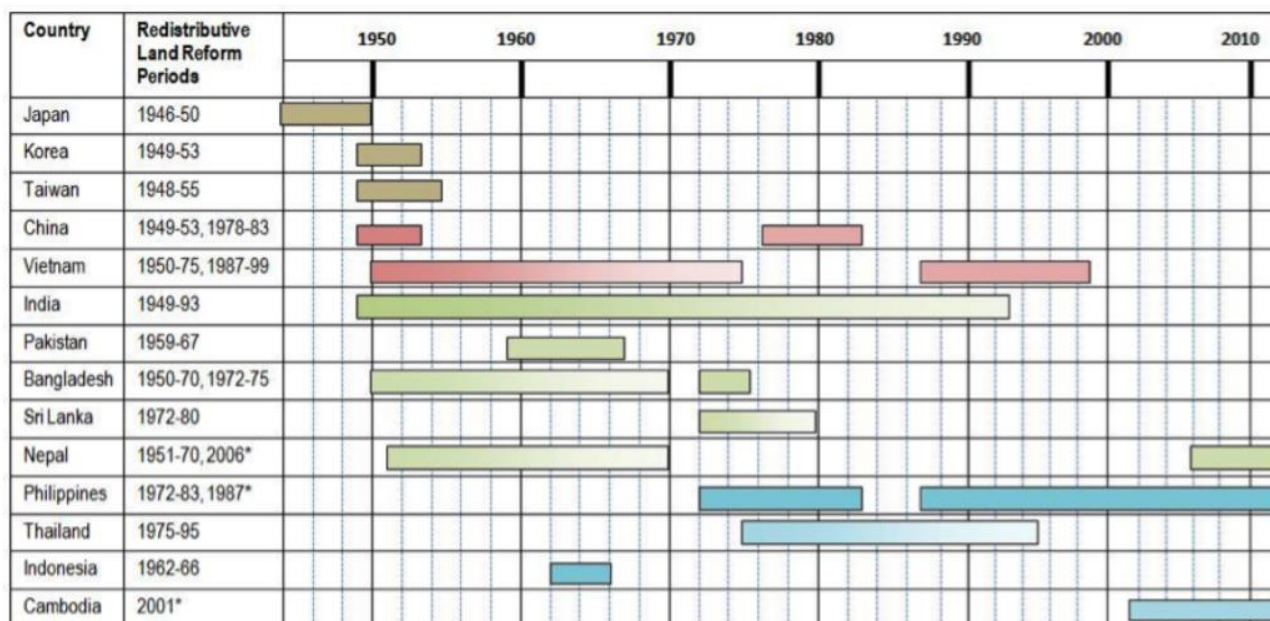


Figure 6.2.5. Periods of redistributive land reform in selected Asian countries. Source: ILC, 2013a, 34.

The **Latin American region** is known as a region of great diversity while it is also characterised by common legacies that directly or indirectly affect land issues. “These legacies include a heritage of patrimonialism based on a land ownership structure in which political influences determine the spatial allocation of public investments and services; strong central administrations with weak fiscal accountability at the local level; and a legal tradition with elitist codes and rigid, even anachronistic, land-related legislation” (Land Lines, 2000: Policy Issues in Latin America, 4-6).

“Informal settlements and land occupations are dealt with quite differently among Latin American countries. In Argentina there have been virtually no restrictions on land use, and consequently there are no officially recognized illegal settlements. Peru's governments have recognized freely accessed un-serviced land on the urban fringe (arenales) since 1961, while in Ecuador there is a complete absence of norms and regulations to deal with informal occupations. Significant variations in national land policies are also important. For example, Cuba is unlikely to give up state ownership of the approximately 70 percent of land under its control, whereas Mexico passed national legislation in 1992 that allowed for the privatization of the land held under its ejido system” (ibid). For a more detailed country case study see: (Barnes, et al., 2015).

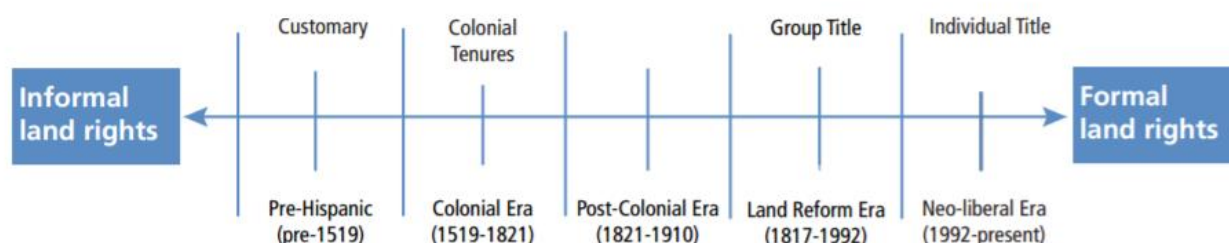
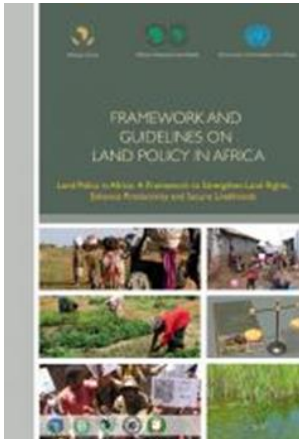


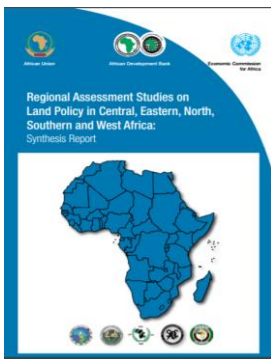
Figure 6.2.6. Historical Continuum of Rights in Mexico. Source: Barnes et al., 2015.

In the **African region**, the land policy issue has recently been addressed more directly by a tripartite consortium of the African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) through the Land Policy Initiative (LPI). Initiated in 2006, the aim was to examine land policy issues and challenges in Africa with a view to developing a framework to strengthen land rights, enhance productivity and improve livelihoods.



The resulting Framework and Guidelines on Land Policies in Africa (AUC/UNECA/ADB, 2009) “promotes the need for a shared vision among all stakeholders of a comprehensive and coordinated land policy as a major factor in national development. It urges African governments to pay attention to the status of land administration systems, including land rights delivery systems and land governance structures and institutions, and to ensure adequate budgetary provision to land policy development and implementation. This Framework and Guidelines is much more than simply another document on land. It reflects a consensus on land issues; and serves as a basis for commitment of African governments in land policy formulation and implementation and a foundation for popular participation in improved land governance” (ibid, xi).

Another fundamental purpose of this framework is to engage development partners in resource mobilization and capacity building in support of land policy development and implementation in Africa. However, progress will often require the development of tracking systems and mechanisms of land policy formulation and implementation that will enable African governments to learn from past successes and setbacks, and make timely readjustments to national land policy processes. Such progress is documented in (AUC/UNECA/AfDB, 2012).



An overview of land policy issues in Africa is provided in AUC/UNECA/AfDB, 2010: Regional Assessment Studies on Land Policy in Central, Eastern, North, Southern and West Africa- Synthesis Report). “This Synthesis Report is a synopsis of the outcomes of the regional assessment reports, which were based on studies and subsequent consultations in five regions of Africa. These reports show that some land related issues are common to all regions in the continent while others are region specific. Issues common to the whole continent are those related to: state sovereignty over land; legal pluralism; gender biases in access to land; land tenure security; and land and conflicts” (ibid, 5).

“A snapshot of region-specific issues shows that: migration and regional integration challenges are currently more prominent in West Africa; Island States seem to focus more on environmental issues and impacts of climate change on land; Southern Africa gives specific interest to unequal distribution of land; Central Africa focuses on the issue of land and natural resources including forests and on land rights for indigenous people; in Eastern Africa, countries have been scrambling for a long time to attract foreign private investment into sectors like tourism and mining, with effects on the customary based land rights of local communities, including pastoral communities; and in Northern Africa there are specific concerns regarding land fragmentation and water rights” (ibid, 5).

“The regional assessments and consultations also identified some important emerging issues that need to be addressed by land policies in the continent. These are issues such as land markets and foreign direct investments (including the way they relate to biofuels); land and climate change; land, demography and urban development; and the new scramble for African land. Experiences of land policy formulation and implementation are diverse. Regions and even specific countries within each region are at different stages of this process. While land reforms have been ongoing for many years in North Africa most other regions (Southern, Western and Eastern Africa) are just going through reforms and are at different stages. In Central Africa, no significant land reform has been undertaken for a very long time” (ibid, 5).



Figure 6.2.7. Left: Customary tenure village area in Malawi. Right: Huge slum area, Kibera, in Nairobi, Kenya. Sub-Saharan Africa is facing some severe land policy problems. Customary tenure areas often accounts for about 90 % of the country land area while they are typically not included in the formal land registration systems. In the urban areas, 90% of all new settlements are taking the form of slums. Sound land policies governance are key measures to address these challenges. Photos: Enemark, 2001 (left) and 2007 (right).

National challenges and drivers for land policy?

As mentioned above, many of goals and targets set by the 2030 Global Agenda relate directly to land governance and call for development of land policies and connected regulatory frameworks to meet the targets. This goes especially for developing countries where the legal and institutional frameworks are often weak and incapable of delivering the required results.

Land policy and reform issues vary between regions across the world as indicated above. And, eventually, the national challenges vary between countries within the region by reflecting the specific country context in terms of history, geography, colonial legacy, economic and administrative development, post-conflict issues, land tenure arrangements, etc. Hence the drivers for land policy development come from a full spectrum covering the global, regional, national and local levels.

Furthermore, the drivers are different in nature. The SDGs set global targets to be achieved by 2030. The VGGTs focus heavily on best practices across a comprehensive range of areas of land governance. They are about WHAT land policy should look like and go into detail about HOW land tenure rights should be recognised, allocated, transferred, and administered in a range of (globally applicable) governance contexts. The Framework and Guidelines for Africa (F&G), by contrast, are about WHY land policy is important, the

contexts and issues it must address, and the challenges that have been encountered within the African region. They also focus heavily on change processes: land policy development, implementation, and progress tracking (ILC, 2013b, 13).

The entry point for land policy development may differ between countries depending on political priorities, national important issues / emergencies, pressure from civil society and various stakeholders, etc. However, in any case, there is a need for political will to start the process and commitment to see it through. A national land policy identifies what a government wishes to achieve using land as a resource and what access and rights people will have. The policy coordinates and aligns the various existing and future policies relating to land to more fully achieve the government's overall policy objectives. Formulating a national land policy is inherently a highly collaborative and transparent process and must include the private sector and civil society.

The land policy process will require access to comprehensive information about land and must consider input from a wide range of land management sectors and associated issues. In this regard, the process may be organised in parallel with building countrywide Fit-For-Purpose land Administration Systems that will deliver the relevant information at scale. This approach is directly aligned with country specific needs, affordable, flexible to accommodate legal as well as legitimate tenure, and also upgradeable when economic opportunities or social requirements arise. It is highly participatory, can be implemented quickly and aimed at providing security of tenure for all. Most importantly, the FFP approach can start very quickly using a low risk entry point that requires minimal preparatory work. It can be applied to all traditions of land tenure across the globe (Enemark et al., 2016).

6.2.3 Monitoring and assessment

How are the drivers monitored and assessed?

There is growing recognition that the success of the new Sustainable Development Goals (SDGs) will depend on the ability of governments, businesses, and civil society to collect and manage data for decision making. The SDGs are ambitious and there is an urgent need to mobilise a data revolution in order to monitor progress, hold governments accountable and foster sustainable development.

There is a strong need for effective monitoring and assessment of progress in achieving the SDGs. There is a need for reliable and robust data for devising appropriate policies and interventions for the achievement of the SDGs and for holding governments and the international community accountable. Such a monitoring framework is crucial for encouraging progress and enabling achievements at national, regional and global level. This calls for a "data revolution" for sustainable development to empower people with information on the progress towards meeting the SDG targets (UN, 2014, p.7).

For example, the 2014 progress report showed that the extreme poverty rate had been halved and MDGs Goal 1 was thereby met at a global scale - but with huge regional deviations. This was achieved mainly due to the contribution from China where, in 1978, the collective farms were dismantled and replaced by long-term leases to allocate land rights to farming households. This policy enforced an era of agricultural growth that transformed rural China and led to the largest reduction of poverty in history. The percentage of people living in extreme poverty declined from about 80% of the population in 1981 (the highest in the world at that time) to only 13% in 2008. In the same way, in Vietnam, the extreme poverty was reduced from 58% in early

1990s to 15% in 2008. On the other hand, even if the Sub-Saharan Africa has seen a considerable growth rate of above 5% per year for more than a decade, this region remains poor for the most part and has been unable to translate its recent robust growth into rapid poverty reduction (Byamugisha, 2013). This underpins the necessity of detailed monitoring at regional and local / country level.

This call for a data revolution is also underlined by the phrase: “If we can measure it – we can better it” (Bill Gates). Experience shows that by monitoring and documenting the on-going progress governments can justify activities and costs – and also attract donor funding toward meeting country specific targets.

According to the UN resolution on the SDGs “..the Goals and targets will be followed up and reviewed using a set of global indicators. These will be complemented by indicators at the regional and national levels which will be developed by Member States, in addition to the outcomes of work undertaken for the development of the baselines for those targets where national and global baseline data does not yet exist. This framework will be simple yet robust, address all Sustainable Development Goals and targets, including for means of implementation, and preserve the political balance, integration and ambition contained therein” (UN, 2015).

Based on this global indicator framework – of about 240 indicators – an annual progress report on the Sustainable Development Goals will be prepared by the UN, based on data produced by national statistical systems and information collected at the regional level (UN, 2016b).

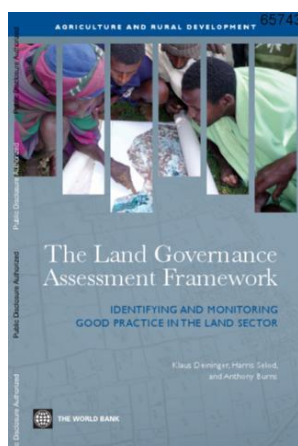
Fortunately, the information and communications technology development has enabled a platform for such a data revolution, including innovative approaches such as the growing use of crowdsourcing and satellite imagery analysis. This is further unfolded in the UN initiated report “A World that Counts: Mobilising the Data Revolution for Sustainable Development” (UN, 2014). However, despite this boom of information in some parts of the world, there are still people and assets, in other parts of the globe, that we know very little about and where the fundamental baseline data are missing. These people tend to be the most marginalised, the poorest, the vulnerable, and the excluded. This challenge is faced by the Africa Centre for Global Development in their report on “Delivering on the Data Revolution in Sub-Sahara Africa” (ACGD, 2014) by identifying five “data building blocks” for innovation: Births and Deaths, Growth and Poverty; Taxes and Trade; Sickness, Schooling and Safety; and Land and the Environment (including cadastral registries and administrative data).

The United Nations Committee of Experts on **Global Geospatial Information Management** (UN-GGIM) was established in 2011 and is mandated, among other tasks, to provide a platform for the development of effective strategies on how to build and strengthen national capacity on geospatial information and disseminating best practices. UN-GGIM has included land administration activities into their remit of global information management. UN-GGIM is gaining influence in the geospatial domain and is increasing the amount of standards, e.g. geodetic framework, and guidance to the geospatial user community. For example, UN-GGIM has published “A Guide to the Role of Standards in Geospatial Information Management” (UN-GGIM, 2014) that provides good background to the range of standards available and examples of their use. UN-GGIM is looking specifically on the way and means by which geospatial information and land administration and management can support delivery of the post 2015 SDGs.

This is further supported by the **Global Land Indicators Initiative** (GLII) that is developing a list of land indicators that will complement the 2030 Global Agenda (UN-HABITAT, GLTN, 2014: Global Land Indicator Initiative). The GLII was established in 2012 with the aim to harmonize monitoring efforts around land tenure and governance and seeking to derive a list of comparable and harmonized land indicators. To achieve this, GLII is exploring the range of monitoring mechanisms and data collection methods. GLII intends to foster

partnership, inclusiveness, consultation, evidence-based indicators, people-centred approach and sustainability. Effective monitoring is central to ensuring that changes in land governance result in improved conditions and sustainable development opportunities for all, especially the poor. In particular, better knowledge and understanding are needed of a) the extent to which people benefit from secure land and property rights; and b) the effectiveness of land related policies and land administration systems in helping to deliver tenure security for all and achieve sustainable use of land resources.

Importantly, with special reference to land governance and administration, the World Bank, in conjunction with UN and other partners, has developed another good example of measuring and monitoring. This is the **Land Governance Assessment Framework (LGAF)** for benchmarking and monitoring the core areas, such as the legal and institutional frameworks.



The LGAF provides a holistic diagnostic review of the country or regional level that can inform policy dialogue in a clear and structured manner and identify weaknesses for improvement. This quick and innovative tool to monitor land governance is built around five main areas for policy intervention: (i) Legal and institutional framework including land rights recognition and enforcement; (ii) Land use planning, land management, and taxation; (iii) Management of public land; (iv) Public provision of land information; and (v) Dispute resolution and conflict management. The LGAF helps policymakers and other stakeholders to make sense of the technical levels of the land sector, benchmark governance, prioritize reforms in the land sector and identify areas that require further attention (World Bank, 2012, 1-2).

Doing Business 2016: Measuring Regulatory Quality and Efficiency, is a World Bank Group flagship publication and the 13th in a series of annual reports measuring the regulations that enhance business activity and those that constrain it. Doing Business presents quantitative indicators on business regulations and the protection of property rights that can be compared across the world and over time since the start in 2003. Doing Business measures regulations affecting 11 areas of the life of a business such as: construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency, and labour market regulation

The Corruption Perception Index was created in 1995 by Transparency International. The organization generally defines corruption as "the misuse of public power for private benefit". The Index provides a ranking of countries according to the extent to which corruption is believed to exist. It ranks almost 200 countries on a scale of zero to 10, with zero indicating high levels of corruption and 10 indicating low levels. Developed countries typically rank higher than developing nations due to stronger regulations. The Index is displayed at a world map: https://www.transparency.org/news/feature/corruption_perceptions_index_2016

Finally, the **Global Property Rights Index (PRIndex)** intends to provide baseline of multi-national dataset measuring how secure people feel about their rights the land and property on which they live and work. These data provide a basis for developing policies, programs, and business models to provide secure property rights to billions of people, and to track the effectiveness of these policies and programs. PRIndex also has the potential to contribute to the SDGs and especially the measuring the place of SDG land indicator 1.4.2 by providing data on perceptions of tenure security (Land Alliance, PRIndex website: <http://www.globallandalliance.org/programs/prindex/>).

The monitoring and assessment measures as presented above are important as an incentive for improvement. Without a road map for measuring the progress, most UN or government pronouncements will have little impact and are easily forgotten – no matter how well-meaning they may be. By monitoring and documenting the on-going progress, governments can justify activities and the related costs, and, thereby attract donor support towards meeting the country specific targets.

Summary

This lesson has focused on understanding the drivers for land policy development.

- The Sustainable Development Goals set some challenging targets to be achieved before 2030. A number of these goals and targets are directly land related and should be seen as a key driver for land policy development.
- A range of other global agreements and guidelines such as the New Urban Agenda, The Voluntary Guidelines on Responsible Governance of Tenure, The UN Declaration on Human Rights, and the global agenda for combatting climate change also act as drivers for land policy initiatives. Furthermore, a number of regional and local challenges are calling for land policy development, with poverty reduction, economic growth, social equity, and efficient land markets being the key drivers.
- Importantly, the land policy process will require access to comprehensive information about land and must consider input from a wide range of land management sectors and associated issues. In this regard, the process may be organised in parallel with building countrywide Fit-For-Purpose land Administration Systems that will deliver the relevant information at scale.
- Importantly, it is recognised that the success of the Sustainable development goals (SDGs) will depend on the ability of governments, business, and civil society to collect and manage land related data for decision-making. The SDGs (and the wider global agenda) are thereby a driver for developing comprehensive land policies in support of building responsible land administration systems being the key provider of such land related data.
- Monitoring and assessment are key measures for tracking progress and initiating improvement. By monitoring and documenting the on-going progress, governments can justify activities and the related costs, and, thereby attract donor support towards meeting the country specific targets.

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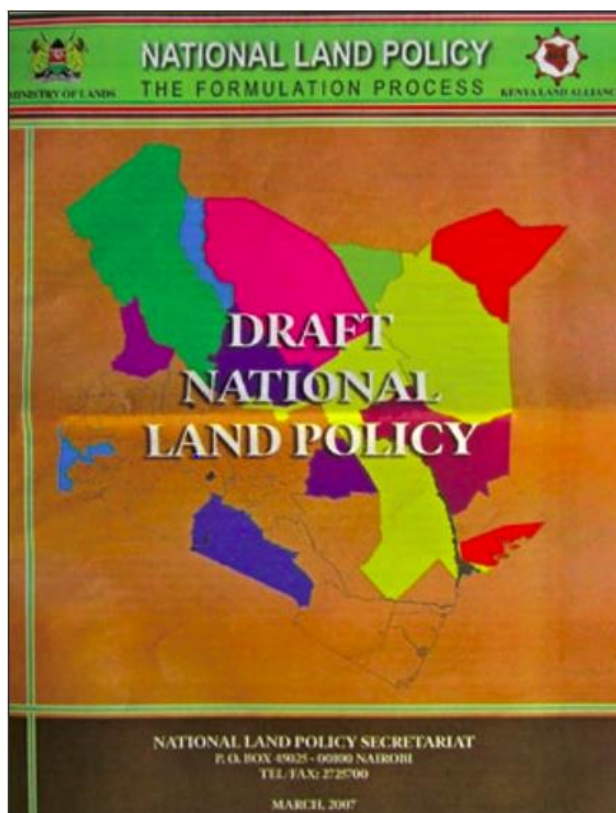
Lesson 6.3: Scope and components of land policy and regulatory frameworks	
Learning objectives At the end of this lesson, learners should be able to: <ul style="list-style-type: none"> • Describe basic land policy concepts • Understand the nature and role of sectoral policies and state land management. • Understand the nature of policy-making and regulatory intervention. 	
Learning steps	Learning Questions
Scope and components of land policies	What is the scope and core components of land policy? Describe the scope and components of national land policies and related regulatory frameworks.
Sectoral policies and state land management	What is a sectoral policy? Provide examples and explain the relation to national land policies. What is state land management? Explain the nature and importance of state land management.
Policy-making and regulation	What is good policy-making? What is evidence-based policy making? Explain how evidence-based policy is guided by solid analyses that shows what works and what does not – and why. What is good regulatory intervention? What is risk-based regulation? Explain the need for identifying the risk of not achieving the end outcome, the purpose of the policy; regulation should manage that risk to an acceptable level - a “Fit-For-Purpose” approach.
Summary	Key points of the lesson
Recommended Reading: <ol style="list-style-type: none"> 1. Deininger, K. (2003): Land Policies for Growth and Poverty Reduction, World Bank. Executive Summary, p. xvii-xxi. 2. European Union (2004): EU Land Policy Guidelines - Support to land policy design and land policy reform processes in developing countries, Chapter 4 and 5, p. 10-20. 3. UNECE (2005): Land Administration in the UNECE Region. Chapter V, p. 60-73. 4. FAO (2007): Good Governance in Land Tenure and Administration. Chapter 4, p.24-27. 5. Evidence-based Policymaking Collaborative (2016): Principles of Evidence-Based Policymaking. 6. Better Regulation Task Force (1997): Principles of Good Regulation. 12p. 	

6.3.1 Scope and components of land policies

As stated in Module 6.1: ... a “policy” is an expression of political aims and objectives concerning a specific issue or area. It is a statement of intent, and is implemented as a procedure or protocol. A policy is then a deliberate system of principles to guide decisions and achieve rational outcomes; and a Land Policy can be described as the set of aims and objectives set by governments for dealing with land issues.

The scope of a National Land Policy is a political document addressing the key land issues and problems in the country. The document sets policy statements for dealing with the various land issues, and more detailed strategies for achieving the goals and implementing the policies through legislative, regulatory and institutional measures and reform. The National Land Policy is often followed by an Implementation Action Plan setting out the specific activities to be undertaken for implementing the policies, and a time frame for completing these activities. To illustrate the scope of a National Land Policy the example of Kenya is shown in figure 6.3.1. For the full text of 64 pages, see (Kenya Ministry of Lands, 2009).

The importance of the National Land Policy for securing land rights and, more generally, contributing to civic society and sustainable land management can hardly be overestimated. See YouTube videos at <http://www.focusonland.com/countries/kenya/kenyas-national-land-policy-and-land-reform/>



EXECUTIVE SUMMARY

1: INTRODUCTION.

- 1.1 The Problem
- 1.2 Vision of the Policy
- 1.3 Mission of the Policy
- 1.4 Objectives of the Policy
- 1.5 National Land Policy Formulation Process

2: THE LAND QUESTION

- 2.1 Country Background
- 2.2 The Origins of the Land Question
- 2.3 Contemporary Manifestations of the Land Question
- 2.4 Land Policy Issues

3: THE LAND POLICY FRAMEWORK

- 3.1 Philosophy of the National Land Policy
- 3.2 Constitutional Issues
- 3.3 Land Tenure Issues
- 3.4 Land Use Management Issues
- 3.5 Land Administration Issues
- 3.6 Land issues requiring Special intervention

4: INSTITUTIONAL FRAMEWORK

- 4.1 Structural Reform Principles
- 4.2 Policy Framework for Land Management Institutions
- 4.3 Support Agencies

5: LAND POLICY IMPLEMENTATION FRAMEWORK

- 5.1 Land Reform Transformation Unit
- 5.2 Capacity Building
- 5.3 Financing the Land reform programme

Figure 6.3.1. Left: The Kenya National Land Policy reaches the front page of the March 2007 special edition of the Daily Nation Newspaper (Nairobi) and thereby highlighting its importance. Right: The outline of contents of the Kenya National Land Policy.

The Kenya National Land Policy (NLP) was adopted in 2009 after years of consultation. Since then, the country has also adopted a new Constitution (2010), which includes a chapter on Land and Environment, anchoring many of the Land Policy's key provisions in law. This was followed by the National Land Commission Act (2012); the Land Act (2012); the Land Registration Act (2012); and the Marriage Act (2014). Furthermore, a Community Land Law, which will devolve ownership and governance of certain lands down to local communities, is expected to be passed in the near future. In 2013, the government formed a National Land Commission to act as the lead agency in land matters, working with the Ministry of Lands, Housing and Urban Development (MLHUD) and county-level institutions towards developing a five-year National Strategic Plan to guide implementation of the National Land Policy. This is not an easy task given the range of vested interests at stake.

Core objectives and components of National Land Policies

"Land policy consists of a combination of socio-economic and legal prescriptions that dictate how the land is to be used and how the benefits from the land are to be shared. It should provide an integrated framework for urban and rural societies, addressing the need for land and other land-related resources such as water, forests and soils. It must strike a balance between the exploitation, use and conservation of the land resource in ways that meet the needs of the present without compromising the ability of future generations to meet their own needs. Its primary objective should be sustainable development." (UNECE, 2005, 60).

"Land policy influences the ways in which the development of land is regulated, the revenue derived from the land (through sale, lease, taxation, fees, etc.), and how conflicts concerning the ownership and use of the land can be resolved. It concerns both public and private land and impacts upon all aspects of land administration, including land title formalization, land survey and property description, land registration, land valuation, land-use control and management, and infrastructure and utilities management." (ibid).

"Sound land management requires operational processes to implement land policies in comprehensive and sustainable ways. Many countries, however, tend to separate land tenure rights from land use opportunities, undermining their capacity to link planning and land use controls with land values and the operation of the land market. These problems are often compounded by poor administrative and management procedures that fail to deliver required services. Investment in new technology will only go a small way towards solving a much deeper problem: the failure to treat land and its resources as a coherent whole." (Williamson, et al. 2010, 118). A National Land Policy is such a comprehensive policy document looking at the land issues as a coherent whole.

Sound land administration and management systems enable the implementation of land policies to fulfil political and social objectives and to achieve sustainable development. These systems deliver a range of benefits to society in terms of support of governance and the rule of law, alleviation of poverty, security of tenure, support for formal land markets, security for credit, support for land and property taxation, protection of state lands, management of land disputes, improvement of land-use planning and implementation, protection of the environment and management of natural resources.

Designing a National Land Policy is a critical and careful process. Overall, a National Land Policy is expected to contribute to the improvement of four key areas (adapted from Deininger, 2003, p. xvii-xxi, and Molen, et al., 2008, 3):

- **Economic growth, investments, access to credit, and productivity.** Secure land rights will facilitate economic growth because households and businesses are invited to invest based on improved credit opportunities based on well-defined land rights. Secure land rights also facilitates transfer of land and a flourishing rental market. Better land distribution promotes productivity and factor market functioning.
- **Poverty reduction, subsistence, and status.** Secure land rights will affect the households' ability to produce for their subsistence and generate a surplus. Their social and economic status is improved as well as their incentives to invest and use land in a sustainable manner. Their ability to self-insure and access financial market is improved. Also, secure land rights to one of the household's main assets is particularly important to women.
- **Governance, democracy, decentralisation, accountability and transparency.** Secure tenure will empower households' and individuals', giving them a greater "voice" and creating the basis for more democratic and participatory local development. This will also encourage decentralisation, opportunities of local tax revenues, and thereby increase the role and accountability of local government.
- **Sustainable land management.** Effective land use is encouraged when the government can take measures to bring land to higher productivity through better land market regulations, fair distribution of land, protection of the environment and natural resources, and incentives for land use that brings social welfare and encourages the start-up of small enterprises.

National land policies may vary in terms of purpose, components, and contextual structure. The overall purpose may be poverty reduction and economic development; security of tenure and gender equity; institutional and legal land reform; food security and agricultural/forestry policy; control of natural resources and environmental management; or, most likely, a combination of several of these purposes. However, no matter the overall purpose, most national land policies tend to include some core components aiming to establish an efficient and effective land administration system serving the need of the specific country and reflecting the national culture, history and geography. These core components of a National land Policy normally include:

- **Country context, problems, vision, goals and objectives.** This component of the policy will set the scene of the specific country and its land related history and problems. In most developing countries, land policies have been strongly influenced by their colonial legacy. Following state interventions have, in many cases, led to economic inefficiencies, ineffective bureaucracies, social injustice and increased poverty (EU, 2004, p. 3). To address these land related problems an overall vision should be presented followed by a number of more specific objectives and their priorities.
- **Land tenure types and security.** This important component is about developing the land tenure framework by identifying the categories of land tenure to be recognized (including customary tenure), and the level of tenure security to be provided. This also includes regulations on access to land for women, children and other vulnerable groups, and foreign citizens.
- **Land registration, valuation and taxation.** This is about building the land registration system, including regulations for surveying and mapping, and legal requirements for adjudication and registration of land rights, including resolution of land disputes. This component may also include principles for land

information management and accessibility, and the building a National Spatial Data Infrastructure. The role of land valuation and taxation should be made explicit at national as well as local level.

- **Land use planning, land use control and land development.** This component should facilitate land use regulation and land development to enhance economic productivity and competitiveness for wealth creation and overall socio-economic development. A framework for land use planning should ensure that land is planned, use and managed for the benefit of present as well as future generations. Some countries prepare a National Plan for land use and development that supports implementation of the overall National Land Policy.
- **Environmental and natural resource management.** A framework for sustainable land management is necessary to ensure that natural resources are optimally and sustainably managed. Land use practices shall conform with principles of sound environmental management, including protection of water resources, forests and wetlands, and biodiversity. Climate change challenges should be addressed through relevant measures of mitigation and adaptation.
- **Institutional arrangements and mandates.** This component should include allocation of clear responsibilities and mandates for land administration and management at national, regional and local levels. A harmonised and integrated institutional framework should be established to facilitate efficient use, appropriate stewardship and effective management of land based natural resources.
- **Road map for implementation.** This is important to ensure political commitment and engagement of all relevant stakeholders from the public as well as the private sector. This component should include a cost/benefit analysis associated with implementing the National Land Policy.

These components presented above are further unfolded in the following lesson 6.4 using the National Land Policy of Uganda as an example.

It should be recognised that many countries do not have a comprehensive land policy; rather they have different policies for different types of land and natural resources. Also, state owned land is often addressed separately. These issues are explored in some detail below.

6.3.2 Sectoral policies and public land management

What is a sectoral policy?

A National Land Policy is a comprehensive policy document, but focused on the land issue. Land policies influence other sectoral areas in the country just as policies and legislation within the sectoral areas will have an impact on or restrict the land use and land development opportunities. This interrelationship is normally coordinated through the constitution and the overall legislative and institutional framework of the country. This is especially important in support of devolution of power to sub-national governments, such as counties and municipalities in order to increase public sector efficiency and promoting economic development. Sectoral policies vary between countries and regions, but are normally focused on providing detailed regulations within specific sectors such as (adapted from EU, 1997, 115-144):

- **Economic, industrial and commercial development.** Economic development policy includes financial and other incentives to businesses and communities to establish and promote employment opportunities. These policies will inevitably have a spatial impact e.g. by addressing the social and

economic disparities in urban vs rural areas. Industrial development policy includes a mix of measures to optimise location and thereby contributing to regional policy or objectives such as privatisation. Commercial development relates especially to town centres and location of major shopping centres etc. These policies on economic, industrial and commercial development all relate closely to spatial planning policies at national, regional and local level.

- **Housing.** Housing policies normally include addressing the balance between privately owned and rental housing as well as measures to influence construction of new housing in favoured locations in relation to urban growth and economic development. Housing policies are closely linked to spatial planning activities. A special issue relates to proper accommodation of slum dwellers where measures are needed by government to supply sufficient land, services and infrastructures as a key regeneration initiative.
- **Environmental protection and natural resource management.** Environmental policy includes a wide range of measures to address the impacts of global warming, air and noise pollution, contamination of groundwater, pollution of land, loss of biodiversity and degradation of urban and rural environments. Natural resource management includes measures to plan the working and use of such natural resources as agricultural land, forests, minerals and water. Specific policies may relate to each of these areas with regulations to be managed at various levels of government. These policies and regulations are obviously closely related to – and sometimes included in – the National Land Policy.
- **Heritage.** Heritage policy includes measures to protect and enhance buildings and sites of particular archaeological, historical or architectural merit. This may also include conservation of larger areas as national parks and protection of specific natural features in the landscape. Heritage policy is often linked with other measures, including those of economic development, leisure and tourism, and environmental protection.
- **Transport.** Transport policies include the planning and proposals for the construction of new infrastructure, traffic management, public transport, measures to coordinate traffic movements and policy to improve access to services and the mobility of the population. The policies and regulations are closely related to many spatial planning topics such as the relationship between transport networks, urban development patterns and economic performance.
- **Leisure and tourism.** These policies normally include both active and passive recreation, and also business travel. Achieving a balance between increased levels of leisure activities and environmental protection is a key priority. There are close linkages between leisure and tourism policies and those for heritage, environmental protection and economic development.

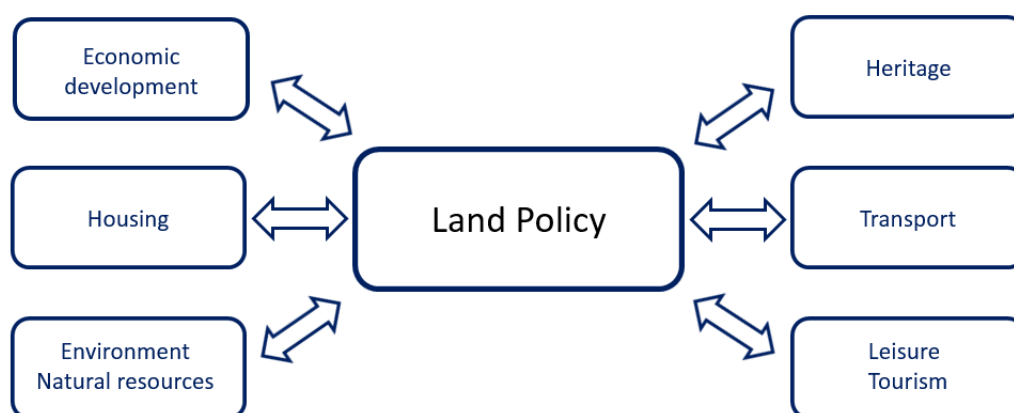
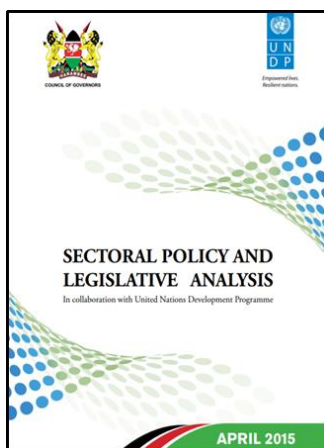


Figure 6.3.2. The Interrelationship between Land Policy and various sectoral policies

As indicated above, there is close link between a National Land Policy and the various sectoral policies. A comprehensive National Land Policy will address most of the objectives related to the sectoral policies, while the specific approaches and the detailed regulations will be contained within the sectoral policies. Further sectoral policies relate to social areas such as health and education may also be included in the National Land Policy, as was the case in a recent project in Kenya aiming to coordinate and align their sectoral policies.



In Kenya, the sectoral policies were analysed by the Council of Governors (the forum for consultation amongst Country Governments). “The report analyses the constitutional, legal and policy and institutional frameworks that are either in place or are currently being negotiated by the two levels of government and recommends the realignment of laws, policies and institutions to conform to the devolution framework as envisaged in the constitution. Decentralisation brings government closer to the people so that local officers are better informed on the local needs; and are thus more capable to provide the optimal mix of local services. This increase in efficiency contributes to economic growth.” (Councils of Governors, Kenya, 2015, viii).

What is state land management?

“Generally, state-owned land and other assets are badly managed throughout the world. There is limited awareness of both the consequences of weak governance in state land management and how to improve the situation” (FAO, 2007, 24). The problems related to management of state-owned land is shown in Figure 6.3.3 below.

Bad management of state-owned land
<ul style="list-style-type: none"> ▪ Lack of information about what state land exists and what rights the state possesses. ▪ Lack of defined policies in relation to the use of state land or standard for its management. ▪ Lack of transparency and accountability in decision making. ▪ Unclear responsibilities that may be fragmented across different ministries and agencies. ▪ Corruption may occur since state land tends to be treated as “free”. ▪ Land grabbing may occur where the state may be stripped of its assets, i.e. by transfer of land into private hands through questionable or illegal means. ▪ Poor records help to conceal the truth. ▪ Political Interference may occur in management decisions and compulsory purchase may be used inappropriately to further private interests.

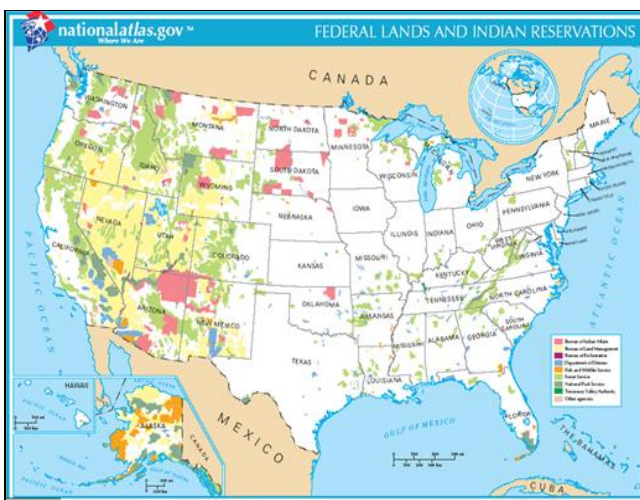
Figure 6.3.3. Bad management of state-owned land (Adapted from FAO, 2007, 24-27).

“Public land is land owned by the state or by local authorities. Public land accounts for a large portion of public wealth of both developed and developing countries. Yet, public property assets are often mismanaged, and nearly all countries underutilize these resources. The power to allocate public land is of great economic and political importance in most countries, and it is a common focus of corrupt practices. Public land is often treated as a “free good”, whereas “good” land in terms of location, use and service delivery is in fact scarce and valuable. Public land management is flawed and contentious because it is dominated by a top-down process that encourages favours to special interests and promotes polarization to obtain such favours. As a consequence, public land rights are often transferred through rule of power processes and not a transparent market mechanism. In many countries, the state itself is the primary threat to secure land tenure, especially for the poor” (Zimmermann, 2007).

Public land management is often the arena for political corruption when government officials use and abuse their power to extract from government assets and from the economy at large. Political corruption takes place at the highest levels of the political system; and can thus be distinguished from administrative or bureaucratic corruption. Bureaucratic corruption takes place at the implementation end of politics, for example in government services such as land administration and the tax department. Political corruption takes place at the formulation end of politics, where decisions are made on the distribution of the nation’s wealth and assets and on the rules of the game (ibid).

Only very few countries have addressed the issue of public land management. The most critical aspect to develop is an explicit public land management policy that sets out clear aims and objectives for administration of this important national asset. An example can be found in the U.S. Federal Land Policy and Management Act of 1976 as amended over time (U.S. Department of Interior, 2001).

A key point in this regard is about providing an inventory of all public land. Accountability, transparency and effective management is only possible when based on adequate and complete land information. However, many governments do not know where and how much public property they own, where it is located, and what rights are attached to it. Again, the U.S. provides a good example in providing a yearly report of statistics etc. on the management of state-owned land. Canada also has a very transparent policy on public land, see <http://www.tbs-sct.gc.ca/dfrp-rbif/home-accueil-eng.aspx>



In USA, state owned land accounts for 27% of the total, located mainly in western part of the country. This is administered by different agencies such as Bureau of Land Management (11%), Forest Service (7%), Fish and Wild Life Service (4%), National Park Service (4%), and the Department of Defence (1%). The administration of all public land is regulated in the Federal Land Policy and Management Act of 1976 (U.S. Ministry of the Interior, 2001), and accounted for in details in a comprehensive yearly report entitled “Federal Land Ownership: Overview and Data” (Congressional Research Service, 2017).

Figure 6.3.4. State-owned land is located mainly in the western part of the country as shown by colours

6.3.3 Policymaking and regulation

What is good policy-making?

Referring to lesson 6.1.1 – a “policy” is an expression of political aims and objectives concerning a specific issue or area. It is a deliberate system of principles to guide decisions and achieve rational outcomes. The process of good policy-making should then ensure that the aims and objectives are viable, rational and can be achieved as intended. For that purpose, it is generally agreed that policy decisions should be informed by rigorously established objective evidence.

“The concept of **evidence-based policymaking** (EBP) has evolved over recent decades as a tool or set of methods, which informs the policymaking process, rather than aiming to directly affect the eventual goals of the policy. The pursuit of EBP is based on the premise that policy decisions should be better informed by available evidence and should include rational analysis. This is because policy which is based on systematic evidence is seen to produce better outcomes. EBP can have an even more significant impact in developing countries; EBP tends to be less well established in developing countries than in developed ones, and therefore the potential for change is greater. Better utilization of evidence in policy and practice can help save lives, reduce poverty and improve development performance in developing countries” (Sutcliffe and Court, 2005).

“Evidence-based policymaking has two goals: *to use what we already know* from program evaluation to make policy decisions and *to build more knowledge* to better inform future decisions. This approach prioritizes rigorous research findings, data, analytics, and evaluation of new innovations above anecdotes, ideology, marketing, and inertia around the status quo” (Evidence-based Policymaking Collaborative, 2016). The EBP concept includes four key principles as shown in Figure 6.3.5:

Evidence-based policymaking – four key principles	
▪	Build and compile rigorous evidence about what works, including costs and benefits. Rigorous evidence can test whether a belief or proposition is true or valid with regard to the impact of programs, including analyses of costs and benefits.
▪	Monitor program delivery and use impact evaluation to measure program effectiveness. Monitoring, evaluation and performance management are important components to check whether policies and programs are meeting their goals.
▪	Use rigorous evidence to improve programs, scale what works, and redirect funds away from consistently ineffective programs. Policies and programs can be adapted and improved based on evidence of the actual outcome.
▪	Encourage innovation and test new approaches. Building on theory and research to develop new ways to address specific program or policy challenges; and determining through evaluation whether new approaches actually work and achieve desired outcomes.

Figure 6.3.5. Four key principles of Evidence-based Policymaking.
(Source: Adapted from Evidence-based Policymaking Collaborative, 2016)

“The EBP concept represent a shift away from opinion-based policies being replaced by a more rigorous, rational approach the gathers, critically appraises and uses high quality research evidence to inform policymaking and professional practice” (Sutcliffe and Court, 2005, 1).

The idea of using evidence to inform policy is not new – it goes back as far as ancient Greece. What is new and interesting however, is the increasing emphasis that has been placed on the concept over the last decade in the western world such as in the UK. “There is the view that EBP approaches have the potential to have even greater impact on outcomes in developing countries, where better use of evidence in policy and practice could dramatically help reduce poverty and improve economic performance. This is because EBP tends to be less well established in developing countries than in developed ones, and policies are often not based on evidence” (ibid, 2). This reveals the need for effective monitoring and evaluation frameworks across government to provide the relevant information and evidence.

In relation to building land policies for responsible land administration the role of civil society organisations (CSOs) is important. CSOs may use evidence to influence the policymaking process at different stages: ():

- **Agenda setting.** CSOs may need to crystallise a body of evidence as a policy narrative to create a window for policy change. A key factor here is the way evidence is communicated.
- **Formulation of policy.** Evidence can help building the credibility of CSOs. The quality of the evidence they use may reflect upon their own reputation and is important to their policy influence. Cooperation with professional, expert knowledge will enhance the influence.
- **Implementation of policy.** Evidence is critical to improving the effectiveness of development initiatives. Capitalising on the practical knowledge and experience of many CSOs can require careful analytical work.
- **Monitoring and evaluation of policy.** The critical crosscutting issue that CSOs must negotiate in order to influence policy effectively is political context.

(adapted from Pollard and Court, 2005, iv)

As an example of evidence for designing land policies in support of responsible land administration and management is the case of Rwanda that may be useful (see figure 6.3.6 below).



Rwanda implemented a well-functioning Land Information System through a program called Land Tenure Regularisation. Nationwide systematic land registration started after piloting in 2009. The goal was to provide legally valid land documents to all rightful landholders and the program was completed in 2013. A general/visible boundaries approach was used and data were collected in a highly participatory manner. For provision of geospatial data high-resolution orthophotos and satellite imagery was used. Teams of locally recruited and specially trained local staff outlined the parcel boundaries on the imagery printouts that were scanned, geo-referenced and digitised. By May 2013 about 10.4 million parcels were registered and 8.8 million of printed land lease certificates had been issued. The unit costs were about 6 USD per parcel (that is of course subject to specific country conditions).

Figure 6.3.6. The case of building a National Land Registration System in Rwanda (Enemark, et al., 2016).

What is good regulatory intervention?

The issue of designing the regulatory framework has also evolved over recent decades. The concept of “**Better Regulation**” was developed in a Task Force under the UK government in the late 1990s. The task force has become a very influential body not only on the UK Government's policy on regulation, but also more globally with regard to setting new principles of good regulation.

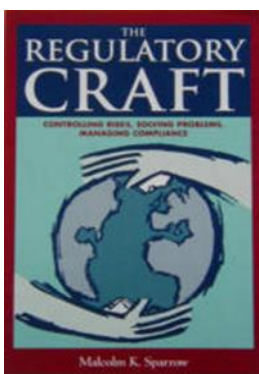
“Government interventions have an impact on us all, both at home and in the workplace. In prosperous societies there are constant demands for more regulation to protect the environment, workers or consumers. But where regulation is poorly designed or overly complicated it can impose excessive costs and inhibit productivity. The job of government is to get the balance right, providing proper protection and making sure that the impact on those being regulated is proportionate” (Better Regulation Task Force, UK, 1997, 1). To achieve this, the Task Force proposes that any policy intervention, and its enforcement, should meet the following five principles:

- **Proportionality.** Regulators should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountability.** Regulators should be able to justify decisions and be subject to public scrutiny.
- **Consistency.** Government rules and standards must be joined up and implemented fairly.
- **Transparency.** Regulators should be open, and keep regulations simple and user-friendly.
- **Targeting.** Regulation should be focused on the problem and minimise side effects.

Figure 6.3.7. Five key principles of better regulation as a test of whether any regulation is fit for purpose.

(Source: Better Regulation Task Force, UK, 1997, 4-6).

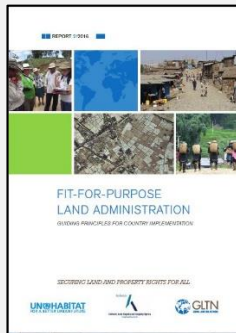
In the UK, the Legislative and Regulatory Reform Act was passed, 2006, to establish statutory principles of good regulation based on the work of the task force. The Act obliges regulatory bodies to have regard to the principles and a code of practice. The principles have inspired and have been further elaborated under the European Union through the EU Commission's Regulatory Fitness and Performance (REFIT) programme. This programme ensures that EU legislation delivers results for citizens and businesses effectively, efficiently and at minimum cost. REFIT aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives (EU, 2017).



A very influential book “The Regulatory Craft – Controlling Risks, Solving problems, and Managing Compliance was published by Prof. Malcolm K. Sparrow, 2000. The book tackles one of the most pressing public issues of our time – the reform of regulatory and enforcement practice. The author invites us to reconsider the central purpose of social regulation – the abatement of control of risks to society. The regulatory process is about first assessing the problem and the risk it imposes to society, and then look at the ways and means to control that risk in a proportional manner. The author uses the notion: “Pick important problems and fix them”. (Sparrow, 2000).

The discussion on regulatory approaches presented above is highly relevant to developing countries when trying to solve the problems of lack of tenure security through building responsible and Fit-For-Purpose (FFP) Land Administration Systems.

It is clear that the implementation proposed by the Fit-For-Purpose concept is significantly different from the more advanced systems embedded in many western economies. This could lead to concerns that, by not following modern best practice for land administration as implemented predominantly in the Western world, then developing countries might be wasting precious resources on building systems that will prove to be outdated and ineffective. However, the FFP approach, if properly applied and implemented, is actually perfectly aligned with modern best regulatory practice as presented above by UK Better Regulation Task Force and the book “The Regulatory Craft” from USA.



This best regulatory practice focuses firstly on defining the “what” in terms of the end outcome for society and communities and then, secondly, it looks at the implementation design of “how” this could be achieved. Or to put it another way, the means (the “how”) should be designed to be the most “fit” for achieving the purpose (“the what”). This intended end outcome – the benefits – needs to be clearly articulated for the public, not just the technical experts. The end outcome, as an expression of the “purpose”, should also be enduring because this allows for the specific implementation to be upgradeable over time. This regulatory design framework fits perfectly to the FFP approach for building land administration systems in developing countries.

There are many examples of land reform projects that have failed mainly due to focusing too much on the “how” rather than the “what”. This relates to projects where an implementation design, which works well in a developed western economy, gets transplanted at huge cost to a developing country with completely different social, cultural and economic needs. The noble intention is to raise a country quickly to the level of a modern economic power. However, the result is not best regulatory practice and therefore it will usually be a frustrating and expensive failure – no more successful than if a land administration system designed for a developing country were transplanted to a developed country. But if the purpose(s) is carefully analysed by people who understand the social, cultural, legal and institutional dynamics of their own communities, the resulting implementation design should be closely aligned with the costs and the benefits that will emerge by moving towards the desired end outcome.

What is usually forgotten in this discussion is that the advanced land administration systems of developed economies did not suddenly appear fully formed in those countries. In most developed countries the initial cadastral and registration systems were implemented very roughly and quickly – rough even by the standards of the day. These rough methods were fit for the purpose for the society at that time – and the result was a quickly developing and vibrant society and economy.

As those societies and economies developed, the methods that had once been fit for the purpose were, several decades later, seen to be no longer fit. Governments undertook formal reviews, reports were written, the old ways were condemned as inadequate and new FFP system upgrades were designed. What was easily forgotten was how well those rough and ready methods had served to quickly build and advance the societies that outgrew them.

Figure 6.3.8. The Fit-For-Purpose concept is a good example of best regulatory practice (Enemark, et al., 2016, 15)

The early Western land administration systems (from 19th century) had many of the same elements as proposed by the FFP concept. They were flexible. They were designed to cover a whole nation or state (inclusive) as quickly (attainable) and cheaply (affordable) as possible. They depended on “surveyors” with widely varying levels of skill and expertise. By modern standards the systems were not very accurate - but for the needs of the time, they were sufficiently reliable and trusted to encourage investments, allow agricultural exports to develop and land markets to flourish. And when the reliability proved inadequate to meet rising expectations, they were upgradeable – not least because they helped to build an economy that could afford to upgrade them.

A catch phrase for this kind of regulatory reform used in New Zealand is “As little as possible – as much as necessary”. This is just another way of saying “Fit-For-Purpose”. The article “Best Regulation Cadastral Surveys” (Grant et al., 2007) looks at changing the form of cadastral regulation to allow the efficient operation of cadastral survey markets while ensuring the achievement of government cadastral outcomes. This, referred to as “Optimal Regulation”, is also being applied to other areas of business such as land registration, topographic mapping, hydrographic charting and valuation. The phrase 'as little as possible, as much as necessary' encapsulates this philosophy of optimising the level of intervention and enabling the marketplace to develop the best solutions to meet regulated requirements.

Summary

This lesson has focused on understanding the scope and core contents of land policies and related areas such as sectoral policies and state land management. Finally, the lesson presents some innovative tools for policy making and building the regulatory framework.

- The National Land Policy of Kenya is used as an example to illustrate the scope of land policies in terms of structure and contents as well as the process of implementation.
- The core objectives, such as economic growth, poverty reduction, good governance, and sustainable land management, are listed and unfolded; and the core components, such as country context, land tenure types, land registration, land use planning and management, institutional arrangements, and the roadmap for implementation are explained in some detail.
- Sectoral policies, such as housing, environmental protection, heritage, transport, tourism, etc., are presented, and their interaction with national land policy is explained using Kenya as an example. In addition, the importance of good and transparent public land management is discussed using the USA as an example.
- An innovative tool for policymaking is found in the evidence-based approach that is explained and the key principles are presented. Another innovative tool relates to the principles for building better regulation frameworks. These principles and their origin are discussed and the Fit-For-Purpose approach is used as a model.

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Lesson 6.4: National examples of developing land policies.	
Learning objectives At the end of this lesson, learners should be able to: <ul style="list-style-type: none"> • Understand the importance of local/country specific factors and their influence on land policy • Understand the nature of land policy statements • Understand the full context and contents of a National Land Policy 	
Learning steps	Learning questions
Land policies: the country context	How is the country context reflected in a national land policy? What are the specific land issues that may trigger land policy reform?
National examples	What kind of political statements are included in a national land policy? Examples from Malawi, Cambodia, Brazil.
The Uganda National land Policy	Case study: Uganda The process; The underlying principles; The structure and contents of the national land policy; The land tenure framework; Features uniquely for Uganda; The implementation process
Summary	Key points of the lesson
Recommended Reading: Enemark, S. and Ahene, R. (2002): Capacity Building in Land Management – Implementing Land Policy Reforms in Malawi. Proceedings of FIG XXII Int. Congress, Washington, April 2002. Also published in Survey Review 37(287): p 20-30 · January 2003. Raydon, B., Fernandes, V., and Tellers, T. (2015): Land Tenure in Brazil: The question of regulation and governance. Land Use Policy, Volume 42, January 2015, p. 509-516. Rugadya, M., Scalise, E. (2013): Developing a National Land Policy in Uganda: A Learning Process. Landesa. 7 p. Törhönen, M. and Palmer, D. (2004): Land Registration in Post Conflict Cambodia. Proceedings of FIG Com 7 Symposium on Land Administration in Post Conflict Areas. 29-30 April 2004, Geneva. 11 p.	

6.4.1 Land Policies: the country context

Most National Land Policies aim at overall global goals such as “To guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity” (Kenya National Land Policy, 2009). They also pursue the key issues of the global agenda, such as poverty reduction, food security, human rights, economic growth, social equity, environmental protection, and sustainable development. However, the entry point for addressing these global goals often relate to the specific country context in terms of important political issues pushed forward by civic society and various stakeholders. Such land related issues may include:

- **Harmonisation of tenure.** The need to clarify land tenure categories and harmonize state and customary law in order to protect legal as well as legitimate land rights;
- **Repossession of alienated land.** Efforts to repossess land alienated by political European colonial administrative laws and past overtly ambitious government development;
- **Addressing economic and social injustice.** To address antecedent economic and social injustices caused by colonial land administration norms and state land privatization ambitions that have direct impact on current land systems to better align with contemporary land rights systems;
- **Reversing expropriations.** To reverse colonial as well as some post-independence expropriation of land and property rights for alienation to specific groups for agriculture, mining, trade and commerce;
- **Redistribution of land.** Redistribution of land, remodelling of land rights and improvement of land administration to more realistically fit the economic, political and socio-cultural norms of a modernizing state;
- **Legal pluralism.** In some cases, legal pluralism caused by the juxtaposition and injustice of past colonial and early post-independence attempts to remodel state and tenure systems alongside well entrenched customary land laws and land management practices in parallel to formal ones; and
- **Donor support.** International donor support and contingent preference may manifest in the form of pressure to privatize land rights to enable land markets. In effect commoditizing of land in return for donor support for decentralization of local government or post conflict reconstruction and development.

Table 6.4.1. Country specific land issues that may trigger land policy reform (Ahene and Enemark, 2017)

Land policy reform is a political action and can be designed in different ways. It may be designed as a comprehensive and systematic approach to address the current land issues in the country. The approach may also be more ad-hoc, aiming at incremental actions directed at resolving land related problems and not intended to cover the full range of land issues in the country. There are also examples of a more piecemeal approach, which proceed on the assumption that the overall legal and institutional framework governing land matters is essentially sound, but require some adjustment. Finally, political actions may be designed to pre-empt conflicts before they reach a crisis level. Such actions are often driven by hastily prepared government white papers or publications without systematic consultation. (Ogendo, 1999).

Discussion:

In your own national context: What are the specific land issues that may trigger land policy reform?

6.4.2 Examples of National land Policies

Malawi.

The Malawi National Land Policy, 2000, is a good example of a comprehensive and systematic approach to dealing with the various land issues deriving from the colonial era. Like other southern Africa countries, Malawi inherited a rural settlement structure in which white farmers held some of the most fertile and well-watered land. The problems associated with land in Malawi are many and varied and are, in many ways, a symptom of a much deeper social discontent and economic hardship. Specific problems arising from the simultaneous operation of customary land tenure and private ownership regimes create institutional obstacles with crosscutting effects. Failure to deal with the land policy concerns from the 1960s and 1970s contributed to problems of poverty, food insecurity and inequities in access to arable land. In the absence of clear policy direction, there has been further tenure insecurity, encroachments, deforestation and cultivation on marginal land, thereby accelerating environmental degradation (Enemark and Ahene, 2002).

By 1994, it had become obvious to policy makers and development professionals that the problems can only be solved through land policy reform initiatives. The World Bank took a leading role in providing support for the preparation of a Land Policy aiming to create a modern environment for protection of property rights, to facilitate equitable access to land for all, and to encourage land-based investment. The overall goal of the Malawi National Land Policy is to ensure tenure security and equitable access to land, and to facilitate the attainment of social harmony and broad-based economic development through optimum and ecologically balanced use of land and land-based resources. A number of objectives need to be satisfied for the aims of the policy to be achieved. Three of the objectives focus directly on decentralization, community empowerment and democratization of land resources management decisions:

- *Enabling decentralization.* The land policy promotes a decentralized administrative framework by providing a formal and orderly arrangement for the establishment of localized Land Registry Offices in each of Malawi's 37 local government areas. Devolving the central government's administrative authority for granting titles and delivering land services in a modern and decentralized registration system that will support local government planning and development functions throughout Malawi. This is to be accomplished by guaranteeing that existing rights in land, especially customary rights of the small holders, are recognized, clarified, and ultimately protected in law.
- *Empowering local communities.* Empowering the community to directly negotiate their own demarcation and registration can happen only through direct appointment of local bodies with the authority to monitor traditional land transactions. This is accomplished by the establishment of Village Land Committees to review allocations and to verify the conditions of transfer to ensure equity and fairness before giving approval to customary land transactions. The policy also empowers local communities to actively participate in local policy development, policy implementation, monitoring and evaluation to ensure adherence to environmentally sustainable land use practices, and good land stewardship.
- *Institutionalizing the role of traditional authorities:* The area for each Traditional Authority will be demarcated, surveyed and registered as statutory areas of administration. This will help establish the legitimacy of land records derived from customary land rights. Existing clans, families and individuals whose land rights can be recognized as legitimate under customary rules, or by legal claims supported by documentation, will have their customary allocations registered as private "customary estates" with property rights in perpetuity. (ibid, 6-8).



Figure 6.4.1. Customary tenure village area in Malawi (Enemark, 2002).

To implement the land policy each traditional authority, headed by a local chief, will be staffed with one land clerk to undertake the everyday land related matters. The land clerks will need one year of basic training in the administrative routines related to land management. The longer term needs were met by adopting a flexible modular structure where the diploma program was designed to merge with the first part of the bachelor program. This flexible program will also allow existing personnel as well as trained land clerks to be updated and upgraded to fulfil the overall aims of the new land policy. This approach of incremental improvement to capacity development has been very successful (ibid, 8-9).

Cambodia

Cambodia can be seen as an example of dealing with the land issues in a post-conflict situation. In ancient times all land belonged to the Sovereign with usufruct rights issued to individual farmers having cleared the forest. During the French protectorate era (1863-1953) land tenure shifted towards private ownership that was continued under the following post-colonial period. From 1975 to 1979, under the Khmer Rouge regime, the post-colonial society was completely reformed by introducing a system of agrarian, totalitarian communism where people were forced to live in communes organized to fit with massive irrigation systems. All types of private ownership on immovable property were abolished and all land registration records destroyed. The Vietnamese helped to overthrow the Khmer Rouge from the main parts of Cambodia and introducing a more traditional type of communism (Törhönen and Palmer, 2004, 3-4).

A new land law in 1989 confirmed that the state was default owner of the country's land, but also that citizens had the right to acquire private ownership of residential land and private possession (leasehold) of agricultural land. The 1991 Paris Peace Agreement ended Vietnamese occupation and established a market economy with recognition of private land ownership in the 1993 constitution. The re-introduction of private property took the form of a broad-based land redistribution program, along with the opening up of the market economy. However, the registration during this program proved insecure and exclusive. The Government of Cambodia soon noticed that land issues had to be increasingly addressed in the name of stabilisation and normalisation. In 1995 the governments of Finland, Germany and France agreed with the government of Cambodia to join efforts to improve the land administration situation. From 2000 also other donors including the World Bank, the Asia development Bank and Canada have provided assistance in various land matters (ibid, 6-7).

The Government of Cambodia embarked on pilot projects for systematic registration, looking for feasible and democratic ways of registration from legal, economic and human rights points of view. The adopted approach

included the principles of “area by area”, “parcel by parcel” and “one parcel one visit” and using the land register offices established in every province and district during the land distribution program. The method included public information and awareness campaign, adjudication and simultaneous demarcation, surveying (simple GPS and photomap interpretation), documentation and the public display (for appeal). One rural parcel required only 0.4 person working days for first registration from the beginning to the issuing of title. The total estimated cost of the first registration per parcel was about fifteen US dollars (in 1999). The figure includes aerial photography, orthophoto production, systematic registration, development costs, training costs, headquarters costs and title issuance (ibid, 7-9).

The success in the systematic registration and its popularity among the public, together with the growing interest in the topic by the international community and NGOs, helped the Government to address the land issue in a more comprehensive manner. In 1999 the Ministry of Land Management, Urban Planning and Construction was established, and a new land law in 2001 provided the foundation for Cambodia’s current land reforms. To implement the 2001 Land Law a major Land Management and Administration project (LMAP) was established and funded by the World Bank in cooperation with other donors. The LMAP was a comprehensive project, including investments to develop land-related policy, legal and regulatory instruments, capacity building, land conflict resolution mechanisms and land titling and registration, and, more specifically, to improve tenure security and promote development of efficient land markets (World Bank, 2009, 2).

In close cooperation with the international community the Government initiated the process to develop a comprehensive land policy framework, created a Land Policy Council, and issued a “Rectangular Strategy for Growth, Employment, Equity and Efficiency” which provides an ambitious set of targets for the country (Royal Government of Cambodia, 2004). In 2009, the Kingdom of Cambodia issued the “Declaration of the Royal government on Land Policy” that is a short and concise policy document addressing the field activities within the sub-sectors: Land Administration, Land Management, and Land Distribution (Council for Land Policy, Cambodia, 2009). Eventually, this was followed in 2014 by the Cambodia Land Policy “White Paper” that is a comprehensive document covering not only the issues related to land tenure, land value and land use, but also the integration of sector policies and state land management as mentioned in the previous Lesson 3 (Council for Land Policy, Cambodia, 2014). Cambodia has come a long way towards managing the land issues as a core component of building a modern democratic society.



Bhutan is another good example of land policy in Asia. As a last command before abdicating, the former King of Bhutan ordered a total cadastral resurvey of all residential and arable land. This should ensure proper management of land as a scarce resource. The project was completed in five years using GPS control points and boundary surveys by total station. This new and highly advanced cadastre was followed in 2010 by the adoption of a brief, yet comprehensive National Land Policy (Centre for Bhutan Studies, Bhutan, 2014). Photo: Punakha Dzong, Enemark, 2012.

Brazil

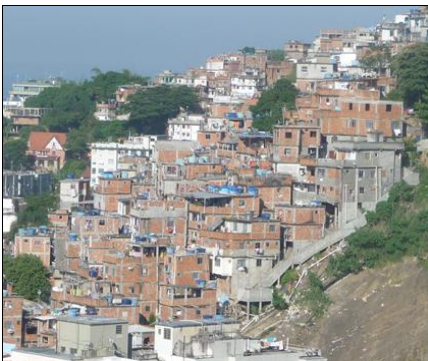
As is the case in most Latin America countries, Brazil does not have a comprehensive land policy to guide the land management issues. Policies are merely related to various land reform initiatives with a focus on redistribution of arable land, but without much real impact.

“In spite of the economic growth and social improvements experienced in Brazil in early years of this century, the country still faces the challenge of solving serious agrarian and land tenure problems. Among these are the high levels of land concentration, the numerous confrontations and violence in rural areas, and the deforestation of the Amazon Forest. The main causes of these problems are the existing set of rules for land ownership that hold back adequate land regulation due to the lack of a cadastre, to the potential for delivering adverse land possession and continuous speculation in rural property” (Reydon, et al., 2015, 1).

The problem of land concentration is illustrated by government statistics showing that 50 percent of the smallest farms occupy around 2 percent of the total farmland, whereas 5 percent of the largest farms occupy about 70 percent. These data reinforce the historical need for Brazil to solve its agrarian problems (ibid, 1). The high degree of land ownership concentration is closely linked to socioeconomic inequality, rural poverty and social inclusion that have caused social conflict and violence in the countryside organised by the Landless Workers Movement (MST).

In the video on “Landless Workers Movement (MST) of Brazil” (2009): <https://vimeo.com/4758500>, Professor Angus Wright describes the history, goals and recent actions of the Brazilian MST. This presentation is a good overview of one of Latin America’s best organized and effective social movements offering alternatives to the standing economic and political models. See also the MST video: Pressure builds on land reform in Brazil: www.youtube.com/watch?v=y08RkPaN8RU

The Brazil land reform experience through history is well described in (Reydon, et al., 2015) and (ILC, 2012) offers a comprehensive geo-historical review of land governance in Brazil. Since the end of the military dictatorship in 1985, Brazil adopted a new constitution that enabled large-scale land reform initiatives, but enforcement of the laws has generally failed. It is suggested (World Bank) that a set of policies be enforced in order to solve the agrarian problem and democratize access to land, such as modernising the land registration system, creating a cadastre of private properties, issuing land titles for tenants in possession, and taxing of land property, etc. However, the overriding problem may still be the inability to effectively coordinate enforcement of several land related policies in the absence of a comprehensive national land policy.



Informal development is a historic characteristic of Brazilian cities, where low-income people are excluded from the formal housing market, and start building homes on vacant land resulting in slums known as *favelas*. The 1988 constitution recognises property rights for favela residents, but many remain unregistered. A new land reform initiative 2016 seeks to expedite the process of procuring titles by subsidising the processing fee while suspending criminal or civil actions for those who register property before a deadline (Healy, 2017). Photo: Rio de Janeiro, Enemark 2010.

6.4.3 Case study: Uganda

See introductory You Tube video <https://www.youtube.com/watch?v=NU1i7aK7eh0> on “Safeguarding property Rights in Uganda” by Prof. Rexford Ahene, Lafayette College, USA, Senior Technical Advisor to the Ministry of Lands, Housing and Urban development, Uganda 2006-2012. See also (Ahene, 2009)

The process

Unlike the process followed by most countries, which starts by formulating a land policy and thereafter proceeds to enact the necessary laws, Uganda was forced to develop its policy after enacting of a comprehensive Land Act in 1998 and attempting to implement the provision of the law for about eight years. The process was started 2001 when a National Land Policy Working Group was appointed to steer the process to the end. The working group completed an Issues Paper in 2004, which identified critical study areas and commissioned short-term studies to fill information gaps where there was little or no information at all.

The process was inclusive and consultative. It deliberately and directly involved national, regional, and district level stakeholders, government, traditional leaders, landowners, and NGOs representing minority and other groups. The process was aided by workshops to review international best practices and evidence from commissioned studies, and technical inputs from land sector professional organizations to fill information gaps provide new information and insight for the policy reform process. Special consultations were held with religious leaders, traditional and cultural leaders and women’s groups. In addition, the Ministry engaged in a nation-wide media and public sensitization campaign announcing the consultations, and encouraging public dialogue on key issues the Land Policy is attempting to address.

It took more than 10 years of intense debates and consensus building before the result of these inquiries in the form of a final draft policy was presented for public approval during a National Land Policy Conference. The new National Land Policy was approved in February 2013 by the Cabinet along with an estimated budget for implementation and assurance of continuing buy-in, support and confidence of all stakeholders. This was followed by developing a more detailed Implementation Action Plan (Ministry of Lands, Uganda, 2015).

The underlying principles

- *Provide guidance for reversing colonial land hegemony* and address antecedent economic and social injustices caused by state land privatization.
- *Ensure the juridical status of land is simple and clearly defined*, especially, the modalities through which land rights are created, acquired and protected;
- *Ensure that the land sector contributes effectively to poverty eradication* by protecting the poor from activities such as speculative and distress land transfers, and indiscriminate evictions.
- *Ensure that the management of the land sector contributes to democratic governance*; the Land Policy Action Plan will compliment implementation of government policies of decentralization and empowerment of the people.
- *Ensure that the management of the land sector contributes to democratic governance*; the Land Policy will implement the government policies of decentralization and empowerment of the people.
- *Ensure peace and stability in land relations and resumption of sustainable livelihoods* by addressing all the root historical and current causes of conflict in areas affected by, among others, war and internal displacement, competition over unregistered customary land, tenure insecurity, population growth, resource depletion and environmental stress.

The Uganda National Land Policy

In order to explain the nature and scope of a National Land Policy in more details, the structure and contents of the National Land Policy of Uganda, 2013 is provided in figure 6.4.2 below. This illustrates how a typical national land policy is divided into a number of frameworks each including a number of sub-themes.

Uganda National Land Policy, 2013	
Foreword Executive Summary 1. Background Introduction The Land Question in Uganda Rationale for the National Land Policy Land Policy Formulation and Consultation Process 2. National Land Policy Framework Introduction Vision of the National Land Policy Goal of the National Land Policy Objectives of the National Land Policy Guiding Principles for the National Land Policy Constitutional and Legal Framework 3. Constitutional and Legal Framework Introduction Residual sovereignty over land as property The power of compulsory acquisition Public regulation of land use and development Land taxation Public Trusteeship over natural resources Government land and public land Minerals and petroleum Land tenure regimes for Uganda 4. Land Tenure Framework Introduction Classification of land tenure regimes Customary tenure Mailo and native tenure Freehold tenure Leasehold tenure Common property resources on private land Land rights of ethnic minorities Land rights of pastoral communities Land rights of women and children Land rights of dwellers in informal settlements	Land rights of other vulnerable groups Restoration of assets to traditional rulers 5. Land Rights Administrative Framework Introduction Land rights administration system Land rights delivery Land rights demarcation, survey and mapping Land information system Land dispute resolution Revenue generation and fiscal function 6. Land Use Management Framework Introduction Land use and land development Optimal use and management of land resources Integration with other productive sectors Land use planning and regulation Land quality and productivity assurance Nat. resources and environmental management Human settlements Agriculture Climate Change Institutional Framework for land based resources 7. Regional and International Framework Introduction Regional/international instruments/obligations Convergence on land policy and legislation Management of trans-boarder resources Cross boarder population movements Interstate boarder disputes and conflicts 8. Implementation Framework Introduction Costing Implementation of land policy Implementation plan for the national land policy Public education/dissemination of the land policy Stakeholder participation Monitoring, evaluation and review

The Uganda National Land Policy is structured around eight chapters representing the core components or frameworks.

The document starts by presenting the background or country context. Each of the following frameworks includes an introduction and they are then divided into a range of sub-themes. Each sub-theme is addressed in three steps:

- I. introducing the issue, its relevance and problems,
- II. policy statements for dealing with this issue, and
- III. strategies and measures for implementing the policy statements.

This design allows for addressing all the relevant components of the National Land Policy in a structured way, and it provides easy access to the policy statements for any relevant issue.

Figure 6.4.2. The Uganda National Land Policy – list of contents.

The Land Tenure Framework.

The National Land Policy articulates the principles of a good land tenure system to guide reforms that define the attributes of the bundle of rights under each of the tenure regimes recognised in the Constitution, including freehold, leasehold and customary tenure. This chapter also recognises other important dimensions of tenure rights, including those regarding women, children and other vulnerable groups as well as dwellers and informal settlements and slums. This framework is key to any National Land Policy and is further unfolded in figure 6.4.3.

The Land Tenure Framework

This component addresses the classification of land tenure regimes within the country. Often, the tenure regimes may already be enshrined in the constitution, while there is a need to clarify the nature of property rights under these regimes to ensure efficient and effective administration and fulfilment of the political goals.

The categories of land may include private land, customary land, public land and state land. The tenure regimes may relate to categories such as freehold, leasehold, customary tenure and community tenure. Policy statements and strategies include:

- The state shall recognise and register freehold and leasehold tenure, and shall exercise regulatory power in compliance with planning standards and regulations for orderly development.
- The state shall recognise customary tenure in its own form to be at same level as other tenure systems. Strategies include design and implementation of a land registry system to support the registration of land rights under customary tenure, and promoting systematic demarcation as a measure to reduce the cost of registering rights under customary tenure.
- Government will reform laws and regulations for the management of common property resources to conform with standards for sustainable use and development. Strategies include enactment of appropriate legislation to clarify who may have access to what categories of common property resources and how such access may be secured.
- Government shall promote efficient, effective and equitable land markets in all land tenure regimes. Strategies include continuous improvement of the quality and completeness of cadastral and land information databases and systems to facilitate the land market; and promoting public-private partnership while retaining ultimate control by the state.

Specific attention should be given to the rights of women, children, minorities and other vulnerable groups, as well as the land rights of dwellers in informal settlements and slums. Policy statements and strategies include:

- Government shall by legislation protect the right to inheritance and ownership of land for women and children. Government shall ensure that both men and women enjoy equal rights before, under, and after marriage and at succession without discrimination. Strategies include ensuring rules and procedures relating to succession do not impede transmission of land to women and children.
- Legislation and management practices shall accord all vulnerable groups equal land rights in acquisition, transmission and use of land.
- Government shall develop and implement measures for effective assurance of enjoyment of all land rights by all citizens. Strategies include ensuring land delivery services are delegated to local authority level as part of taking services closer to people.
- Government will ensure the supply of affordable land in urban areas and provide a framework for regularising land tenure for dwellers in informal settlements and slums. Strategies include facilitating negotiations between registered landowners, the government and dwellers of informal settlements and slums to regularise their land rights.

Figure 6.4.3. Extract of the Uganda National Land Policy, 2013 – determining the Land Tenure Framework



Figure 6.4.4. Left: The beautiful rumbling Nile, Uganda. Right: The Land Registry Office, Kampala, Uganda, 2009, showing the deeds archive. This analogue archive is now fully digitised. (Photos: Enemark, 2009).

National Land Policy features uniquely fit for Uganda

- Creation of a customary register to facilitate registration of customary rights;
- Strengthening women's land rights through enactment of provisions promoting the regime of marital property law and joint ownership of land and property for married parties;
- Overhaul of the existing institutional framework for land administration and land management through decentralization of land services by bringing land services nearer to the populace to make them more efficient, cost-effective and accessible;
- Reinstatement of administrative Land Tribunals to handle escalating land conflicts and land evictions;
- Legal recognition of the dual operation of both customary system and statutory system in land rights administration, land dispute resolution and land management by empowering customary authorities to perform their functions; and
- Continuing support and implementation coordination by different government departments, development partners, the private sector, civil society organizations, professional bodies, cultural institutions, faith-based organizations and other non-state actors.

Land Access and Tenure Reforms.

The policy allows all customary land to be registered and protected by law and strengthens the traditional supervisory role of chiefs, clan leaders, headpersons and family heads in land matters. All customary landholders, defined to include entire communities, families or individuals are encouraged to register their holdings as private customary estates with land tenure rights that preserve the advantages of customary ownership, but also ensures security of tenure.

Land Use Planning and Registration

Land use planning has been extended to all rural and urban land, including freehold, leasehold and customary tenure areas. All landowners in planning areas are required to comply with approved planning and development regulations. District Land Registries are to be modernized and linked to a National Land Information System of Zonal Registries to record all land transactions and to offer surveying and land management services in a decentralization system intended to bring land services closer to citizens.

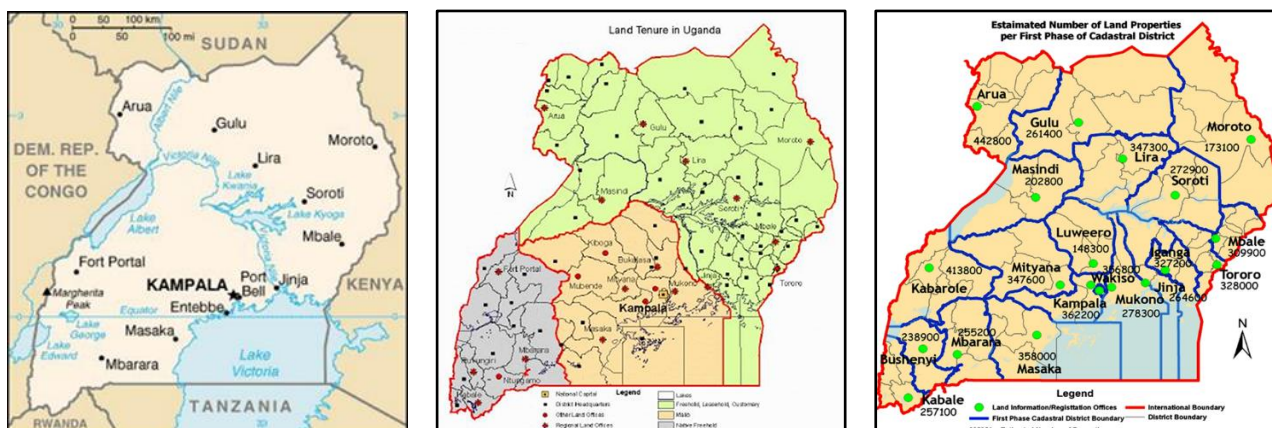


Figure 6.4.5. Left: Uganda, with a population of 28.3 million and an area of 200.000 sq.km (excl. Lake Victoria waters), received independence 1961 after 70 years of British colonization. Middle: Land tenure in Uganda is divided between Native freehold 22% (grey), Mailo 28% (yellow) and Customary 50% (green). Right: Cadastral Information Branch Centres providing local access to reliable land information. Source: Government of Uganda.

Implementation

Implementation of the National Land Policy involves the conversion of policy statements and strategies into a comprehensive program of land reform. The policy must be internalised, popularised, translated and widely disseminated if it's to achieve its objectives. This includes establishing a multi-sectoral committee to lead the implementation process; proposing a timetable for development of new legislation; reviewing of existing legislation and institutional arrangements in line with the National Land Policy; and defining the roles of the Ministry responsible for lands and other actors, such as development partners, private sector, and civil society among others. This will include facilitating the drafting of all legislation necessary to implement the National policy, capacity building of key personnel in the implementation of this policy, and organising of civic education and public awareness for stakeholder participation. Finally, the government will initiate a monitoring and evaluation framework for the implementation of National Land Policy. The Uganda Government has prepared such an action plan for implementation of the National Land Policy. This Implementation Action Plan (Ministry of Lands, Uganda, 2015) lays out in detail the actions under each of the National Land Policy Frameworks that are needed to ensure that the policy is fully implemented by 2019.

Discussion:

Rugadya and Scalise (2013) have described a few pragmatic lessons from the process of developing a National Land Policy in Uganda – lessons that others similarly engaged in policy development will benefit from, see:

www.landesa.org/wp-content/uploads/National-Land-Policy-in-Uganda_A-Learning-Process_FINAL.pdf

At a first glance, these lessons are simple:

- set a clear vision, goal and objectives,
- ensure a thorough and vetted explanation of issues that need to be addressed,
- develop a multipronged approach to gaining political support,
- consider flexibility in public consultations, and
- spend time in planning and managing expectations and risks.

Yet, their impact on the final result can be powerful.

Discuss these simple lessons based on the case study presented above.

Summary

This lesson has focused on the profile and contents of National Land Policies and their development and implementation in response to country specific land problems. Finally, the lesson presents some tools for assessment and revision of land policies and the regulatory framework.

- The overall global goals for National Land Policies are revisited. The entry point for addressing these global goals often relate to the specific country context in terms of important political issues pushed forward by civic society and various stakeholders. Examples of such land related issues are listed and the different ways of designing a national land policy are indicated.
- Three different approaches to Land Policy are presented using the examples of Malawi (comprehensive and systematic approach), Cambodia (post-conflict situation), and Brazil (land reform approach). Each example explains about the unique country situation in terms history, land policy process, contents of specific land issues, and implementation.
- The case study of the Uganda National Land Policy is unfolded in some details in order to illustrate the process, the underlying principles, the structure and contents of the policy with examples of goals and strategies, the features uniquely fit for Uganda, and the process of implementation.

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Lesson 6.5: Interrelationships between land policies and responsible land governance	
Learning objectives At the end of this lesson, learners should be able to: <ul style="list-style-type: none"> • Explain the importance of land policies for enabling responsible land governance for sustainable development. • Describe how land policies and regulatory frameworks can be assessed and improved. 	
Learning steps	Learning questions
Responsible land governance	Recapturing the relevance of land policy Understanding the importance of land policies and secure property rights as a precondition for sustainable pro-poor economic growth. Discuss the principles of responsible land governance and the hierarchy of land issues.
Enabling land policy processes	How to enable land policy processes? What is the role of land policies for achieving sustainable land governance? What kinds of donor interventions that are relevant in the land policy process?
Assessment and capacity development	How can land governance frameworks be assessed and improved? Present the Land Governance Assessment Framework (LGAF) Present the tool for capacity assessment I land administration Explain the role and importance of the capacity development concept.
Recommended Reading: Deininger, K. (2004). Land Policies and Land Reform. World Bank, Washington, p. 1-5. Enemark, S. and Molen, P. v. d. (2008): Capacity Assessment in Land Administration. FIG publication no. 41, p. 9-14 European Union (2004): EU Land Policy Guidelines - Support to land policy design and land policy reform processes in developing countries, Part 2, p. 25-34. GLTN / UN-Habitat (2012): Handling Land, Nairobi, Chapter 10, p. 115-122. UN-FAO (2008): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs), Rome, Chapter 4 and 5, p. 6-9. Zevenbergen, De Vries, and Bennett (eds.) (2016): Advances in Responsible Land Administration. CRC Press, UK. Chapter 16, p 271- 278. World Bank (2012): Land Governance Assessment Framework. Washington, p. 1-9.	

6.5.1 Responsible Land Governance

Recapturing the relevance of land policy

“Inappropriate land policies constitute a serious constraint on economic and social development in a number of respects that are of great significance for developing countries. Insecure land tenure, outdated land laws, and slow or dysfunctional institutions of land administration can restrict private investment, undermine good governance, and reduce the ability of local authorities to raise taxes. Highly skewed distributions of landownership and patterns of land access that discriminate according to gender or ethnicity limit the ability of decentralized market mechanisms to put land to its best uses, shrink economic opportunities among disadvantaged groups, including the ability to use land as collateral, and foment social conflict and violence.

While the importance of land tenure and access to land for agricultural production and for shelter and housing has long been clear, recent research goes beyond this recognition by emphasizing the significance of secure property rights over land as a precondition for sustainable pro-poor economic growth. This perspective is based on several considerations.

- *Investment climate.* Non-transparent, corrupt, or inefficient systems of land administration and allocation add substantial costs to the efforts of small entrepreneurs to transform good ideas into viable enterprises. Indeed, in investment climate surveys conducted by the World Bank, poor access to land was identified as the main obstacle to business by 25 percent of enterprises in both Kenya and Tanzania, 35 percent in Bangladesh, and 57 percent in Ethiopia.
- *Credit market access.* Well-functioning land institutions and markets and the opportunities they create for using easily transferable land titles as collateral can help reduce the cost of acquiring credit, thus contributing to the development of enterprises and financial systems.
- *Local government revenues.* Greater demand for land, together with public investment in roads and other infrastructure, tends to boost land values. In many cases, inadequate mechanisms for taxing land mean that the scope for local governments and local residents to benefit from such increases in value is constrained. Instead, the gains fuel speculation or end up as bribes.
- *Accountability and transparency.* In most developing countries, more than half the wealth of households is in land and real estate. If the system to administer such a significant portion of national wealth is perceived to be corrupt, inefficient, and untrustworthy, it is difficult to maintain confidence in the rule of law and in the competence of the state.
- *Social peace.* The importance of land for economic growth does not reduce its relevance for poverty reduction. Even access to small plots of land can improve household welfare and act as a safety net. In situations where land has been expropriated during a colonial past, land reforms are generally economically and socially desirable.” (Deininger, 2004, 1-2).

Principles of responsible land governance?

“The element of “responsible” adds a new notion to conventional approaches in land administration. It aligns the administration much more fundamentally to the ever-changing needs and capabilities of individuals, government, and society. The term “responsible” was introduced as well in the Voluntary Guidelines on the Responsible Governance of Tenure (FAO 2012, Chapter 4 and 5, p. 6 - 9). Responsible in these guidelines is a specific attribute that encompasses a human rights approach, socioeconomic development, poverty eradication, and food insecurity” (Zevenbergen et al., 2016, 5).

So, how do these characteristics of responsible governance and innovation make sense in the day-to-day reality of land administration and land administrators? The book (ibid, 6-7) offers three approaches to this question: (i) New drivers and inspirations changing land administration; (ii) Innovative technical and operational designs of land information systems; and (iii) Impacts of land administration systems and the new ways to measure these impacts.

In the context of this lesson 6.5, especially the first approach is relevant. “The new drivers and inspirations changing land administration include a specific bias in providing tenure security and designing land administration system toward the pro-poor, connecting land administration to specific challenges of providing food security, constructing land administration systems that align with dynamic processes of urbanization and allow for effective and responsible urban governance, reconstructing and establishing land administration systems during and after major conflicts, and assembling land administration systems from the crowd in the cloud” (ibid, 6-7). “In this way, land administration can further develop into a new type of scientific discipline, one that can support the derivation of contemporary fit-for-purpose and responsible solutions” (ibid, 277).

The hierarchy of land issues

“A simple entry point for understanding the land issues is presented in the diagram Figure 6.5.3. The hierarchy illustrates the complexity of organizing policies, institutions, processes, and information for dealing with land in society. The diagram also illustrates an orderly approach represented by the six levels.

This conceptual understanding provides the overall guidance for building land administration systems in any society, no matter the level of development. The hierarchy also provides guidance for adjustment or reengineering of existing land governance frameworks. This process of adjustment should be based on constant monitoring of the results of the land administration and land management activities. The land policies may then be revised and adapted to meet the changing needs in society. The change of land policies will require adjustment of the LAS processes and practices that, in turn, will affect the way the way land parcels are held, assessed, used, or developed.

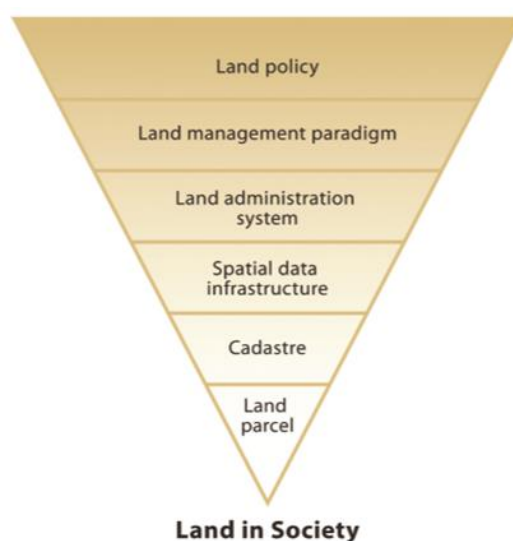


Figure 6.5.3. Hierarchy of land issues forms an inverted pyramid with land policies in the top and the land parcel at the bottom (Williamson et al., 2010, 132-133).

- **Land policy** determines values, objectives and the legal regulatory framework for management of a society's major asset, its land.
- **The land management paradigm** applies to LAS design to drive an holistic approach to the LAS, and forces its processes to contribute to sustainable development. The paradigm allows LAS to assist land management generally. Land management activities include the core land administration functions: land tenure, value, use and development, and encompass all activities associated with the management of land and natural resources that are required to achieve sustainable development.
- **The land administration system** provides the infrastructure for implementation of land policies and land management strategies; and underpins the operation of efficient land markets and effective land use management. The cadastre is at the core of any LAS.
- **The spatial data infrastructure** provides access to and interoperability of the cadastral information and other land information.
- **The cadastre** provides the spatial integrity and unique identification of every land parcel usually through a cadastral map updated by cadastral surveys. The parcel identification provides the link for securing rights in land, controlling the use of land and connecting the ways people use their land with their understanding of land.
- **The land parcel** is the foundation of the hierarchy because it reflects the way people use land in their daily lives. It is the key object for identification of land rights and administration of restrictions and responsibilities in the use of land. The land parcel links the system with the people.”
(Source: Williamson, et al., 2010, 132-133)

6.5.2 Enabling land policy processes

Land policies for sustainable land governance

The GLTN publication on “Handling Land” provides some guidance on enabling land policy processes (GLTN / UN-Habitat, 2012, Chapter 10). It is stated ...“A lack of adequate frameworks for fiscal management of land and land based resources contributes to poor planning and land use, speculation, rapidly growing informal settlements, a lack of services and infrastructure, and a loss of land-based revenue for the government. These in turn lead to food shortages, health problems, urban planning challenges, and land disputes between individuals and groups, between citizens and the state, and between countries” (GLTN / UN-Habitat, 2012, 115).

“The only sustainable way to address these issues is through development of comprehensive, integrated land policies and the connected constitutional, legal and institutional frameworks. “Coordinated mechanisms and structures need to be set up to institutionalize public consultation and access to information. Coherent linkages, harmonization and feedback are needed between the national and local levels. Innovative ways are required to ensure that laws guarantee rights to marginalized groups, such as women and children” (ibid, 117).

The GLTN points at four ways to address these challenges: (i) the Land Policy Initiative in Africa (see lesson 6.2); (ii) the Voluntary Guidelines on Responsible Governance of Tenure (see lesson 6.2); (iii) Harmonization of donor activities (example of Kenya, ibid p.118-120); and Integrated Land Policy Development (example of the Caribbean, (ibid, 121-122).



Jamaica is one of the few good examples of comprehensive land policy development in the Caribbean. This policy (2002) was exemplary both because of its comprehensive and integrated nature, and because of the participatory way it was developed. In a small population of 2.5 million, over 2,000 public officials, professional and civil society representatives took part. Institutional reforms in the government have facilitated the implementation of elements of the policy. Political changes and economic problems have limited its overall success, but both its content and the way it was developed remain a model in the region. (ibid, 121). Photo: Settlement, Jamaica, Enemark, 2002.

GLTN recommends that two areas in particular need further attention (ibid, 122):

- *“Institutional transformation coupled with capacity development.* This is essential in assisting land institutions to respond more effectively to increasing demands of land administration and management. This means enhancing the ability of individuals, institutions and systems to perform their functions and deliver efficient, cost-effective and equitable land services. That can take a long time, so a long-term commitment is needed.
- *Engaging stakeholders.* Engagement with stakeholders at all levels of developing land policies helps ensure that they are informed about the issues and can express their opinions in developing policies. That in turn will ensure that the policies are more appropriate, can help overcome resistance and difficulties, and will promote consensus, political will and a feeling of ownership for the policies. An inclusive process makes it easier to deliberate controversial issues and agree on the way forward” (GLTN/UN-Habitat, 2012, 122).

Donor interventions in the land policy process

The process of land policy formulation and implementation is long and complex. The EU Land Policy Guidelines offers a list of possible donor interventions (EU, 2004):

- *“Research and analysis:* to improve knowledge and understanding of land policy, land rights and ownership, and maximise impact on the poor.
- *Policy formulation:* participatory processes for policy formulation, public debate with stakeholders, provision of expertise, exchange of experiences and best practices (local/national/international), facilitation. Pilot testing of innovative approaches. Supporting the capacity of marginal groups to participate and voice their interests. Support government’s role as mediator and the engagement of farmers’ organisations and other civil society groups in the public debate.
- *Legislation:* Support to the development of new tenure legislation and revision of codes, to recognise and regulate new types of rights or forms of transfer. Gender sensitive revision of inheritance law. Balancing short term legal reforms to address urgent problems, with longer term legislative development. Support to the judicial system to resolve land disputes. Capacity building in the judiciary and support for legal assistance for marginalised groups. Key principles for donors’ engagement.

- *Land administration:* Improvements to the efficiency of land administration systems, specifically:
 - *Registration and titling:* Establishment of systems for land registration and titling of existing rights, cadastral services, land surveying, capacity building in local communities to support identification and management (including registration) of customary rights.
 - *Formalising and securing land transactions,* regulation of land markets: Establishment of simple and fair procedures for land transactions and their formal registration; mechanisms for regulation of land markets (giving priority to farmers, allowing local bodies to define rules about land sales outside the community, etc.); maintenance of land information systems; regular land valuation exercises
- *Land Management:*
 - *Land redistribution and resettlement:* Land purchase and redistribution, by government, directly by beneficiaries or by land trust funds or other intermediary bodies; funds for compensation of landowners facing expropriation; provision of rural infrastructure, support to services and productive support in newly settled areas.
 - *Restitution:* Restitution of land rights alienated from the original owners or users. Restitution of lands to indigenous peoples according to their ancestral rights.
 - *Privatisation:* Privatisation of collective or state property (land condominiums, etc.), infrastructural development.
 - *Resolution of land disputes and land adjudication:* in land registration programmes or following land reforms, restitution or privatisation processes.
 - *Institutional development:* Establishment of new institutions and structures with responsibility for land acquisition, administration and conflict resolution.
- *Taxation:* Designing, testing and setting up a land-based tax system.
- *Land use and planning:* Provide support to develop and disseminate appropriate land use plans as a basis for a sustainable use of land and water.
- *Environmental impact:* Impact assessment of reform processes and projects; development and application of environmental and land use regulations.
- *Monitoring and evaluation:* development of M&E systems, expertise for the identification of indicators on policy relevance and impact. Support civil society engagement in participatory monitoring of land policy reforms.” (EU, 2004, 32-33)

An appropriate strategy will combine the above activities in a logical sequence and an adequate timeframe and budget line. It would foresee systematic testing of reform options in pilot projects. As most land reform programmes will contain one or more of the above activities, land reform programmes are ideal candidates for Sector Programme-type of approaches and provide good opportunities for budgetary support from donors (see Global Working group on Land <http://landgov.donorplatform.org/#>).

“The land policy process should include integration with broader development planning. This includes analytical work on the place of land in poverty reduction strategies and programmes; horizontal and vertical integration with sectoral policies and programmes; production and marketing; investment promotion; housing and urban development; service delivery; natural resource management and utilisation; decentralisation; regional and local economic development; programmes for good governance, gender equality and access to justice” (EU, 2004, 34).

6.5.3 Assessment and capacity development

Any land policy initiative needs to be accompanied by a road map for implementation and an effective monitoring and evaluation framework to ensure that the goals and objectives are achieved or accordingly revised. In the regard a number of tools are available as described below.

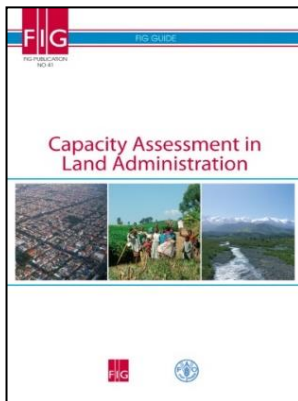
Land Governance Assessment Framework (LGAF)

The World Bank, in conjunction with UN and other partners, has developed a tool for in-depth assessment of land administration at country level. As referenced briefly in lesson 6.2, the Land Governance Assessment Framework (World Bank, 2012) is a diagnostic tool that can help countries prioritise reforms and monitor progress over time. The framework comprises a set of detailed indicators to be rated on a scale of precoded statements based on existing information. These indicators are grouped within five broad thematic areas that have been identified as major areas for policy intervention in the land sector:

- *“Legal and institutional framework.* Indicators are designed to assess: (a) the extent to which the range of existing land rights is legally recognized, (b) the level of documentation and enforcement, and the cost of enforcing or gradually upgrading these rights, and (c) whether regulation and management of land involve institutions with clear mandates as well as policy processes that are transparent and equitable.
- *Land use planning, management, and taxation.* The intention of this category is to assess whether (a) land use restrictions are justified on the basis of the public interest, (b) necessary exemptions are granted promptly and transparently, (c) the process for land use planning is efficient, and (d) taxes on land and real estate are transparently determined and efficiently collected.
- *Management of public land.* This category assesses the extent to which (a) public landholdings are justified and transparently inventoried and managed, (b) expropriation procedures are applied in the public interest through clear, transparent, and fair processes involving the compensation of all those who lose rights, and (c) the transfer or devolution of state land is transparent and monitored.
- *Public provision of land information.* Indicators related to this category assess (a) whether land information systems provide sufficient, relevant, and up-to-date data on land ownership to the general public, and (b) whether land administration services are accessible, affordable, and sustainable.
- *Dispute resolution and conflict management.* This fifth set of indicators can be used to assess (a) whether a country has affordable, clearly defined, transparent, and unbiased mechanisms for the resolution of land disputes, and (b) whether these mechanisms function effectively in practice” (ibid, 2).

“Assessing land governance indicators through the LGAF relies on independent, expert analyses that feed into meetings of expert panels to provide a consensus rating. For each country, results are summarized in a report that helps identify good practices and areas for improvement. The consistent structure of reports across countries provides a basis for comparison and identification of good practice. The methodology was initially tested in five pilot countries (Peru, the Kyrgyz Republic, Tanzania, Ethiopia, and Indonesia), and further in about 30 countries throughout the world. Experience shows that the LGAF can be implemented over a three- to four-month period at reasonable cost. Using independent local experts provides ownership and credibility to the exercise and results in an objective diagnosis that can lay the basis for better-informed policy” (ibid, 2-3).

Capacity Assessment in Land Administration



This FIG publication on Capacity Assessment in Land Administration (Enemark and Molen, 2008) provides practical guidance on addressing the capacity needs in land administration. First the publication provides a general understanding of the capacity building concept and emphasises that even if the key focus may be on education and training, capacity building is also about developing institutional infrastructures for implementing land policies in a sustainable way. Second, the methodology is presented as a logical framework for addressing each step from land policy, policy instruments, and legal framework, over mandates, business objectives, and work processes; to needed human resources and training programs see figure 6.4.6. below.

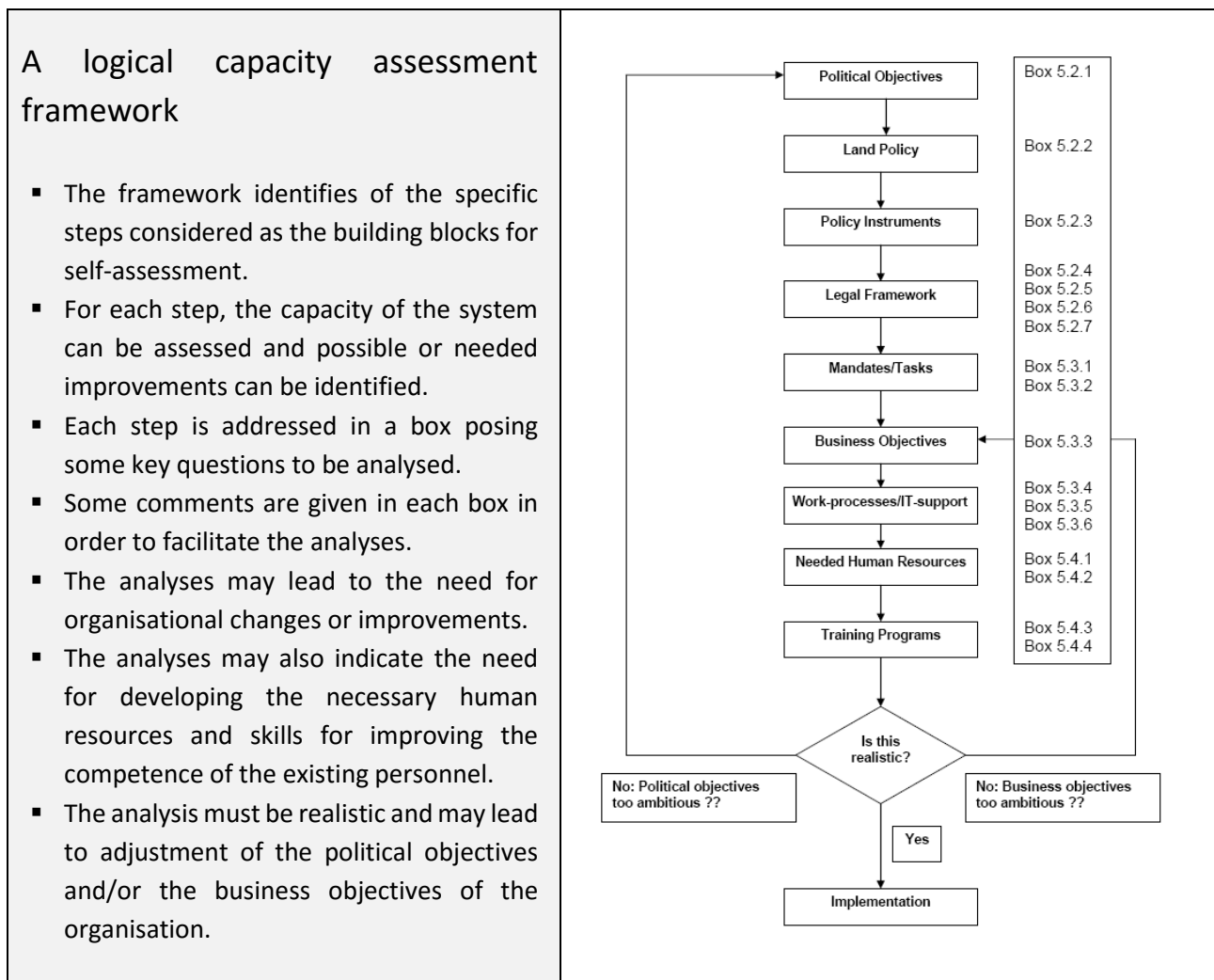


Figure 6.4.6. A logical capacity assessment framework for land administration (Enemark and Molen, 2008, 13-14).

This simple framework presented above unfolds the land administration concept in building blocks or steps from the political objectives down to the tasks of the individual land administration officer:

- Governments pursue political objectives of which many are land related, such as poverty eradication, sustainable agriculture, sustainable settlements, development of economic activity, and strengthening the role of vulnerable groups within the society.
- In order to realise these objectives governments may develop policies on how access to land and the benefits of the land are to be allocated.
- Government then design policy instruments related to the key functions of land tenure, land value, and land development, and the legal and regulatory framework for dealing with these functions.
- Governments assign mandates within the public administration regarding the tasks to be carried out. This includes decisions on centralization/decentralization, public/private roles, customer orientation, public participation, accountability, liability, and good governance in general.
- In order to exert the given mandate, the organizations have to define their business objectives, business processes, ICT policy, total quality management procedures, and their relationships with other organizations e.g. by means of spatial data infrastructures.
- In order to make the organizations work, they have to identify the staffing policy, the required expertise and skills in terms of capacity assessment and development (ibid, 10-12).

A more recent approach to Capacity Assessment Tools for Land Policy Implementation is found in (De Vries et al., 2016). This draft methodology includes experiences from Kenya, Mozambique and Uganda but is still to be tested in practice.

Capacity Development

There is now an emerging agreement within the development community that capacity development is the engine of human development. Human, institutional and societal capacity remain critical for designing and implementing strategies towards achieving development objectives including the SDGs.

“Capacity development refers to the process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time”. (UNDP, 2009)

Nevertheless, “what exactly do we mean by capacity development? Confusion around the term seems to have grown along with its popularity. For some, capacity development can be any effort to teach someone to do something, or to do it better. For others, it may be about creating new institutions or strengthening old ones. Some see capacity development as a focus on education and training, while others take a broader view of it as improving individual rights, access or freedoms” (UNDP, 5). Such an integrated approach is also highlighted in the GLTN Capacity development Strategy (Pearson, et al., 2014) and in the approach for implementing Fit-For-Purpose Land Administration Systems (Enemark, et al., 2018).

The reality is that capacity development contains elements of all these aspects mentioned above. There are three levels where capacity is grown and nurtured: in an enabling environment, in organizations and within individuals. These three levels influence each other in a fluid way – the strength of each depends on, and determines, the strength of the others:

- **“The enabling environment:** is the broad social system within which people and organizations function. It includes all the rules, laws, policies, power relations and social norms that govern civic engagement. It is the enabling environment that sets the overall scope for capacity development.
- **The organizational level:** refers to the internal structure, policies and procedures that determine an organization’s effectiveness. It is here that the benefits of the enabling environment are put into action and a collection of individuals come together. The better resourced and aligned these elements are, the greater the potential for growing capacity.
- **The individual level:** are the skills, experience and knowledge that allow each person to perform. Some of these are acquired formally, through education and training, while others come informally, through doing and observing. Access to resources and experiences that can develop individual capacity are largely shaped by the organizational and environmental factors described above, which in turn are influenced by the degree of capacity development in each individual”.(Source: UNDP, 2009, p 11)

An essential ingredient in the capacity development approach is transformation. “For an activity to be considered as capacity development, it must bring about transformation that is generated and sustained over time from within. Transformation of this kind goes beyond performing tasks; instead, it is more a matter of changing mindsets and attitudes² (UNDP, 2009, 5). Ideally, capacity development responses should begin by asking some fundamental questions such as:

- To what end do we need to develop capacity – what will be its purpose?
 - Whose capacity need to be developed? Which groups or individuals needs to be empowered?
 - What kinds of capacity need to be developed to achieve the broader development objective?
- (UNDP, 2009, p. 19)

UNDP offers a five-step model for understanding the capacity development process:

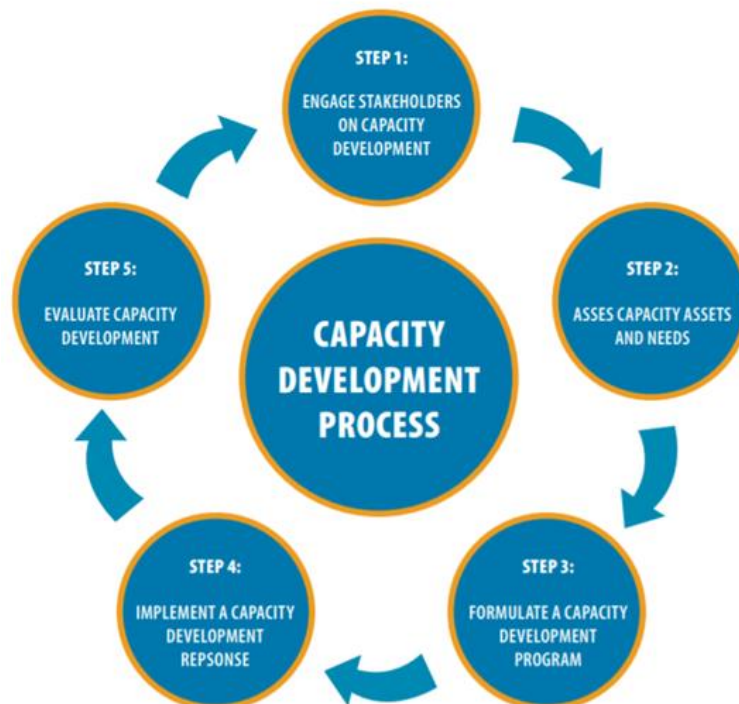


Figure 5. The five steps of the capacity development cycle (source: UNDP, 2009, p. 21).

The Quest for Capacity

“A country’s capacity to establish, maintain and sustain land administration systems varies throughout the world. In some developed countries the capacity is well established and enables maintenance and further innovation of advanced interactive land information systems. In most developing countries, however, the capacity is very sporadic in terms of both institutions and personnel.

When building land administration systems in developing countries the quest for capacity development is fundamental. “Don’t start what you can’t sustain” - this simple phrase indicates that measures for capacity development must be established up front when starting a project on building sustainable land administration systems. The biggest challenge is often to ensure effective and efficient management of the systems once they are established and the donors have left the country.

Capacity is the power of something – a system, an organization or a person to perform and produce properly. Capacity development is not only about human resources and skills – it is just as well about building sustainable and trustable institutions for running the systems. Capacity development must be seen in a wider context of providing the ability of organisations and individuals to perform functions effectively, efficiently and sustainably. This includes the requirement to address capacity needs also at institutional and even more broadly at societal levels. Capacity development does not imply that there is no capacity in existence; it also includes retaining and strengthening existing capacities of people and institutions to perform their tasks and deliver services.

Measures of education and training are of course important at all levels from university degrees to short term programmes for training land clerks. This should ensure that there is a sustainable long-term capacity of educated and trained personnel available within the public as well as the private sector for operating the system. This also includes retaining and strengthening existing capacities of people and institutions to perform their tasks and deliver services.

Universities have a fundamental role in educating land professionals, but they should also undertake research and capacity development through interacting with government and society to develop adequate solutions to the core land issues. In some developing regions, such as Francophone Africa, this role of the universities is not well understood and should be improved e.g. by establishing regional centres of capacity development.

There is a need to focus on pro-poor land administration approaches for providing more flexible and fit-for-purpose solutions to building sustainable systems for security of tenure and effective management of the use of land. The scale of this task is huge given that most developing countries have a cadastral coverage of less than 30 per cent that is based on systems established in colonial times and serving mainly the elite. The quest for capacity in land administration is a fundamental issue for implementing sustainable land administration systems and, more generally, for meeting the overall global agenda in terms of economic growth, social equity and environmental sustainability”

Stig Enemark, GIM International, April 2014

Concluding discussion:

Discuss the relevance and requirements for comprehensive National Land Policies to meet the land challenges of the future. Use the insight from this Module 6 to address the following questions:

- What is the role of national land policy and responsible land administration in achieving the Sustainable Development Goals?
- What is the role of national land policies in facing challenges such as poverty reduction, food security, social and gender equity, climate change, and environmental sustainability?
- What is the role of national land policies in ensuring security of tenure for all and responsible governance of land?
- What are the means of national land policies in terms of legal and institutional frameworks to achieve the objectives?



Masters of all they survey: Children in Malawi. Enemark, 2001.

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